Supreme Court, U.S.
FILED
JUL 09 1993
OFFICE OF THE CLERK

(1)

93-74

No. _____

# In the Supreme Court of the United States of America

OCTOBER TERM, 1993

JOHN CHEPPA
Appellant

V.

PENNSYLVANIA
Appellee

PETITION FOR WRIT OF CERTIORARI TO THE

SUPERIOR COURT OF PENNSYLVANIA

Middle District

John Cheppa
717 Catherine Drive
Harrisburg, Penna.
17112- 3618
717-545-5744

17 pp

## QUESTIONS FOR SUPREME COURT REVIEW

1. Whether the Commonwealth of Pennsylvania acted Unconstitutionally, unjustly, and illegally with the Executive branch of government assuming the judicial function of prosecutorial discretion over a citizen-victim's private Criminal Complaint regarding a prima facie case of perjury and false swearing against a Public Official.

## PARTIES TO THE CASE

The caption of this case in the State Courts was somewhat misleading, for it was listed there as COMMONWEALTH OF PENNSYLVANIA V. STANLEY KITNER. However, the true parties are:

John Cheppa, Appellant
7176 Catherine Drive,
Harrisburg,
Pennsylvania 17112-3618,
Petitioner.

And,

Richard A. Lewis, Appellee
Dauphin County District Attorney,
Front and Market Streets,
Harrisburg, Pennsylvania 17101,
Respondent.

## TABLE OF CONTENTS
## PETITION


| CONTENTS | PAGE |
|---|---|
| Questions | i |
| List of the Parties | ii |
| Table of Contents | iii |
| Table of Authorities | iv |
| Reference to Opinions in the case | 1 |
| Statement of Jurisdiction | 2 |
| Constitutional Provisions & Statutes | 2 |
| Statement of the Case<br>History | 2 |
| Procedure in the Courts below | 4 |
| Argument | 6 |
| Reasons for Review | 6 |
| **APPENDICES** | |
| Index to Appendices | ai |
| Appendices | a1 |
| **Filed Separately** | |
| Affidavit of Service | |

## TABLE OF AUTHORITIES
## COURT DECISIONS

**Federal:**

Hammond Packing Co. v. Arkansas,
212 U.S. 322, 29 5. Ct. 370.
.....a65, a71, a78

Hill v. Texas, 316 U.S. 400.
.....a67, a73, a81

Linda R.S. v. Richard D.
and Texas at al. 410, U.S. 614, 619,
93 S.Ct. 1146, 1149, 35 L Ed. 2d 536
(1973). Majority Opinion.
.....9

Id. Dissenting Opinion
.....10, 21

Louisiana er. rel. Francis v.
Resiveber, 329 U.S. 459.
.....a67, a73, a81

Louisville Gas & Electric v.
Coleman, 277 U.S. 32.
.....a67, a72, a80

Mountain Timber Co. v. Washington, 243 U.S. 219 37, Ct.
260.
.....a66, a71, a79

U.S. v. Cruikshank, 92 U.S. 542.
.....a67, a72, a80

United States v. Shober,
489 R. Supp. 393 (D.C. Pa. 1979).....a82

**State:**

Commonwealth of Pennsylvania v. Benz, ___Pa._____,565 A.2d 746 (1989). Majority Opinion. .....14

Id. Concurring Opinion. .....13

Id. Dissenting Opinion. .....9, 10, 16, 17

Commonwealth v. Liebowitz, 17 A.2d 719, 143 Pa. Super. 75 (1941). .....a83

Commonwealth of Pennsylvania v. McHale, 97, Pa. 397 (1881). .....13

Commonwealth v. Stanley Kitner Dauphin County No. 12 M.D. 1991. .....4, 5

Commonwealth v. Stanley Kitner Dauphin County No. 455 M.D. 1991. .....5

Commonwealth ex rel. Spector v. Bauer, 437 Pa. 37, 261, A 2d 537 (1970). .....12

In ew: Charge to grand jury, 97 P.L.J. 115 (Pa. 0. & T. 1949).....a82

**County:**

Commonwealth v. Vanity Bar, 4849 S 1990 .....a83

John Cheppa v. West Hanover Township Dauphin County No. 3171 S 1987 .....3

West Hanover Township v. John Cheppa Dauphin County No. 4314 E. D. 1973. .....2, 3

**District Justice:**

John Cheppa v. West Hanover Township District Justice No. TA 87-427 .....3

**STATUTES**

U.S. Constitutional Bill of Rights. .....16, 20, 21, 22, 23

U.S. Constitutional Amendment V. .....2, 5, 6, 18, 20, 21

U.S. Constitutional Amendment XVII .....2, 5, 6, 7, 11, 13, 18, 20, 21, 22, 23

Separation of Powers Doctrine .....12, 15, 23

28, U.S.C. ss 1257.....2

16 P.S. ss 1401 et seq.....12

16 P.S. ss 1409 .....13

18 Pa. C.S.A. ss 4902.....7, 12, 15

18 Pa. C.S.A. ss 4903.....7, 15, 21

42 Pa. C.S.A. ss 133
.....1, 4, 6, 12, 13, 15, 16

42 Pa. C.S.A. ss 742.....2

Act of March 12, 1866,
P.L. 85, ss1... .....13

Act of July 9, 1976,
P.L. 586, No. 142, ss 2... .....6

**RULES OF COURT**

Pa. R. Crim. P. 9022..... .....19

Pa. R. Crim. P. 9023..... .....19

Pa. R. Appl. P. 1112 (a)... .....2

Pa. R Proff. Con. 3.5 .....19

**OTHER AUTHORITIES**

Cardenas, Juan, The Crime Victim the Prosecutorial Proses, 9 Harv. J.L. & Pub. Pol'y 357
(1986) .....12

Crosskey, William Winslow,
Politics and the Constitution, in the
History of the United States, (Chicago Ill., University of Chicago Press (1953).
London, N.W. 1, England, Cambridge
University Press (1953).
.....20

Curtis, Michael Kent, No State Shall Abridge the Fourteenth Amendment and the Bill of Rights, (Durham, North Carolina: Duke University Press, 1986) pp. 210 & 211. ..... 22

Penn, William, The Excellent Privilege of Liberty and Proper Being the Birthright of Free Born Subjects of England, Philadelphia, William Bradford, pp. vii and viii (1687)? ..... 18, 20

Private Prosecution: A remedy for District Attorney's Unwarranted Inaction, 65 Yale L.J. 209 (195S). ..... 13

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993
JOHN CHEPPA,
Appellant
v
PENNSYLVANIA,
Appellee

## OPINIONS BELOW

Via Rule 133 of the Pa. R.Crim.P (Appn. M, a27) two different Private Criminal Complaints (Appn. H, a20 & Appn. G, a16) of perjury and false swearing by a public official were given to the State Attorney and he denied both alleging a lack of materiality (Appn. F, a15 & Appn. H, a20). The petitions were then taken to the court where they were both denied (Appn. E, a10 & Appn. D, a9) there was no Opinion to the second Order. In neither of these Complaints did the Court allow an evidencing hearing although we requested such a hearing in Exceptions to the first case, the Brief to those Exceptions, the Memorandum to the second case and the Brief to the Appellate Court (Appn. TT, a131 - a134).

Both Complaints were consolidated and denied with the Order and Opinion being Appn. C, a4. In the final Opinion the Common Pleas found that the defendant had been lying in court for years but alleged that the case was unimportant and the D.A.'s discretion must not be disturbed. The Court also erroneously determined that this was a case concerning a private matter between the Accused and the Affiant. The Superior Court also alleged that the D.A.'s discretion must not be disturbed (Appn. B, a2). The Supreme Court of Pa. refused the hear the case (Appn. A, a1).

## JURISDICTION

Rising in the Common Pleas as challenge to the State Attorney in refusing to prosecute 2 prima facie cases of perjury against a government official, the Superior Court had Jurisdiction under 42 Pa. C.S.A. ss742, (Appn. UU, a135). The Pa. Supreme Court had Jurisdiction under Rule 1112 (a) of the Pa. Rules of Appellate Procedure (Appn. UU, al35). Jurisdiction of the U.S. Supreme Court is Title 28, U.S.C. ss 1257 (Appn. J, a23). The 1st Order was entered on April 23, 1991, the 2nd was entered on June 26, 1991, the final was on July 19, 1991, and placed in the Superior Court of Pa. on August 13, 1991; its Order was filed on May 28, 1992. On June 29, 1991, the issue was taken to the Supreme Court of Pa. and its Order was handed down on February 11, 1993 and mailed on or after February 18, 1993. Notice of Appeal was February 17, 1993 (Appn. MM, a119 & a120) and Application for additional time for this Petition was mailed on March 30, 1993 (Appn. NN, a121- a125). On April 7 the time for filing was extended until July 11, 1993 (Appn. PP, a126).

## CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Supreme Court Jurisdiction, Title 28, U.S.C. ss 1257 is Appn. J, a23. Amendment V to the U.S. Constitution is Appn. K, a24. Amendment XIV is found in Appn. L, a25.

## STATEMENT OF THE CASE HISTORY

Arising from a case of conspiracy by the Government of West Hanover Twp. in Dauphin County, Pa. against Cheppa, the Public Officials of said Township sought to deprive him of full use and enjoyment of his home by removing the dirt from his front yard; the Twp. Government needed it to fill a depression behind the municipal building and create a parking lot. In 1971, the Government granted permission to Cheppa to fill his front yard providing he dig a ditch in front. After digging the ditch and filling the yard the government came to take the dirt. They were stopped by Cheppa's attorney so they decided to take the dirt off the right-of-way in front of the home. Cheppa objected and the government agreed that it was Cheppa's dirt and placed it on the Cheppa property at a location specified by Cheppa. The Township still wanted Cheppa's dirt and filed a case to 4314 E.D. 1983. Heard on

February 27, 1984, three public officials of said Twp. did knowingly and willingly commit the acts of perjury and false swearing. The acts of perjury and false swearing by the Government were brought to the D.A. but he refused to prosecute and the issue was dropped. The Government was successful for although it did not remove the front yard, after hearing the case the Court Ordered agreement on Public Storm Drains which was reached and molded into an Order which specified that Cheppa would purchase the Pipe and the Government would install it covering it with their own soil. The Twp. refused to install the pipe but under threat by the Court of being held in contempt, the pipe was installed about three months later.

After installation the Government used $2500.00 worth of Cheppa's soil to cover the pipe, and left a large area unfilled. Legal action was brought and docketed to No. 4314 E.D. wherein Cheppa sought to recover the soil (taken without just compensation) to have the remaining pipe filled over, and numerous other provisions. Mr. Kitner, in his capacity as Township Supervisor and Foreman of Roads testified under oath on behalf of the township as Public Official Kitner and not as Citizen Kitner, in this and all subsequent cases, a total of four bench trials.

On August 26, 1986 Kitner testified that he: "[U]sed the soil of Cheppa to fill over the Pipe. The Court stated that a new case would have to be heard for recovery of the stolen soil. A new case docketed to TA 87 427 and heard by the District Justice on July 21, 1987, wherein Kitner testified that he, "did not use Cheppa's soil; it was all Twp. soil. The Government, based upon the perjurious testimony, prevailed. Another case docketed to No. 3171 S 1987 was filed in the Common Pleas and heard by a Board of Arbitrators on March 28, 1988, where Kitner testified that, no soil was taken from the Cheppa property, it was all Twp. soil. The Twp. was Ordered to repay John Cheppa the value of the soil.

The Twp. Government took the matter to a Judge who heard it on July 13, 1988. Kitner testified that on August 5, under very heavy rain he found the street in front of the Cheppa property flooded, and to alleviate the flooding he removed the soil from the right-of-way reciting applicable law, and stored it on the Cheppa property then used it later, therefore, none of the soil used by the

township was Cheppa's. The problem with this testimony was that there was no rain and when Kitner removed the soil from the R-O-W and stored it on the Cheppa property he did so because he agreed that it was Cheppa's soil.

This history shows the Township's overt conspiracy, for it was a group decision to go to court 5 times with perjury to claim Cheppa's private property without just compensation. Bringing allegations of conspiracy was contemplated but it was determined that the voluminous documents required to evidence such a conspiracy would loose the court, therefor, charges of perjury and false swearing by the last conspirator were brought to the D.A. The D.A. refused to investigate those allegations. Cheppa made an investigation and wrote a report. The D.A. (Appn. R, a35) replied that the false testimony used by Kitner was not material.

## PROCEDURE IN THE COURTS BELOW

An attorney was retained and by Rule of Crim. P. No. 133 (Appn. M, a27) filed a 1st Complaint for Private Prosecution on November 20, 1990 which was docketed to 12 M.D. 1991 (Appn. H, a20).

As noted on the face of that petition, the D.A.'s only reason for denying the Pleading was: "Portions of Defendants testimony that is in controversy, even if knowingly false, was not material to the outcome of proceedings." On January 4, 1991, the issue was taken to the Court of Common Pleas where a Complaint, an Affidavit and Memorandum, was filed and in paragraphs 8 and 9, of the Complaint, the U.S. Constitution was raised for the first time (Appn. G, a32). The D.A. failed to acknowledge the Constitutional issue (Appn. R, 33 & 34).

In that document, the D.A. (when referring to his discretion) was referring to the fact that he has discretion to evaluate the evidence only, and he was not referring to prosecutorial discretion, for if he had been referring to prosecutorial discretion he would have so written. The Common Pleas asked the D.A. for a Memorandum on February 26, 1991 (Appn. SS, a130). That Memorandum was filed ex parte, thus, establishing ex parte communications with the Court. The Court's first Opinion (Appendix E, p. a13) suggest that it never even saw or considered the Affiant's Complaint or the evidence of a prima facie case (Appn. T, 37-63). The Court states that the Affiant failed to allege that

Kitner knew he was lying and that the Affiant failed to supply whether data (Appn. E at a13) Appn. H at a21. a21 shows that the Affiant did make that allegation and Appn. T11, a59 shows that such data was supplied and that it did not rain on August 5, 1983 during the time in question. Any information that the D.A. may have supplied to the contrary was false. Exceptions were timely filed, and in paragraphs 9 and 10 the Constitutional Amendments were again voiced (Appn. U, a64) and in the brief to exceptions the Affiant elaborated upon the 5th and 14th amendments (Appn. V, a65 through a68). A 2nd Complaint of 2 new counts of perjury and 3 new counts of false swearing were brought to the D.A. (Appn. G, al6 - al9). The D.A. denied the pleading on May 13, 1991, (Appn. F, a15) alleging that the 2nd Complaint was an attempt to circumvent the Order dismissing the 1st Complaint and that the statements by Kitner were not material. It is important that the D.A. did not give "prosecutorial discretion" as a reason for dismissing the complaints.

The 2nd case was also placed before the Court on June 9, 1991, as Case No. 455 M.D. 1991, and again in paragraphs 9 and 10 (Appn. W, a69) the U.S. Constitution was raised. In the Affiant's Memorandum filed with that case the 5th and 14th Amendments were recited (Appn. X, a70 - a75). On June 26, 1991, the Court denied that 2nd Petition. Exceptions were taken on July 1, 1991, and in those Exceptions, paragraphs 9 and 10, (Appn. Y, a76) the U.S. Constitution was again raised. In the brief to the Exceptions of the 2nd case (Appn. Z, a77) the Constitution was again raised. The Exceptions of the 1st case (12 M.D. 1991) and the exceptions of the 2nd case (455 M.D. 1991) were consolidated and argued together where the 5th and 14th Amendments were voiced for a final time before the Common Pleas. The D.A. filed no Answer or Memorandum nor any other papers in the 2nd case, nor did he appear in court to argue the exceptions, thereby, giving no other reason for denying the 2nd Complaint for Private Prosecution other than his initial letter which denied that pleading on the grounds of a lack Materiality and a fear of circumventing the 1st Order of Court.

In the final Opinion (Appn. C, a4 - a8) the important matters were, 1 The Court did not pass upon the 5th or 14th Amendment of the U.S. Constitution. 2 The Court did not find that Kitner's

perjury was not material. 3 The Court did not find that there wasn't enough evidence to warrant prosecution. 4 The Court did find that Kitner had been giving conflicting testimony about the same series of events in different legal forms [forums] over the course of years (Appn. C at a8). 5 The Court erroneously reasoned that the D.A.'s discretion must not be disturbed (Appn. C, a5). 6 The Court alleged, that the case was not important enough to warrant prosecution (Appn. C, a8).

Nevertheless, in the Act of July 9, 1976 P.L. 586, No. 142, ss 2, as amended, the Pennsylvania legislature believed that perjury by a Public Official was an extremely important case because it extended the Statute of Limitations from 5 years to 13 years in such cases (Appendix CC, pp. a87 & a88).

The matter was placed before the State Superior Court and in questions 8 and 9 the 14th and 5th Amendments to the U.S. Constitution were raised (Appn. AA, a78 to a83). The Superior Court denied the relief sought and did not rule on the Constitutional issues, therefore, an application to the Pennsylvania State Supreme Court was made, and the U.S. Constitution was again raised (Appn. BB, a84 - a86). That Court denied the application to hear the case.

## ARGUMENT

Incorporated herein in support of this argument are Petitioner's Appendices with all of the Argument and Citations found there being as if fully recited here. Because those Arguments (valid as they are) were used in the courts below and are, assigned as Appendices to this Petition, your Honorable Court will agree that further duplication of printing is unnecessary here.

## REASONS FOR REVIEW

* The D.A. did not plead Prosecutorial discretion. * Rule 133 of the Pa. R.Crim.P does not give the D.A. Prosecutorial dis-cretion. * The Penn. Perjury Law precluded the D.A. from using prosecutorial discretion to determine a question of materiality. * The Constitutional separation of powers doctrine precludes the D.A. from determining a question of law. * The 5th Amendment grants the power to indite or not to indite only to a grand jury. *

The 14th Amendment grants equal protection and due process to this Appellant Citizen.

CONSTITUTIONAL ISSUES RAISED

Unconstitutionality of D.A.'s decision is raised in the 1st Complaint to Court (Appn. Q, p. a32) 1st Exceptions (Appn. U, p. a64) Brief to 1st Exceptions (Appn. V, p. a65 - a68) 2nd Complaint (Appn. W, p. a69) 2nd Memorandum (Appn. X, p. a70 - a75) 2nd Exceptions (Appn. Y, p. a76) Brief to 2nd Exceptions (Appn. Z, p. a77) and argued at the hearing of Exceptions. In the Brief to the Superior Court (Appn. AA, pp. a78 - a83) in the Application to the Supreme Court (Appn. BB, pp. a84 -a85) along with the separation of powers doctrine (Appn. LL, p. a117 & a118).

## EVIDENCE, OF PRIMA FACIE CASE

Appn. P, a29, is the Penna. perjury and false swearing Act which states that One is guilty of perjury if he knowingly makes a false statement that did or could have affected the course or outcome of a case, that a person is guilty of false swearing if he knowingly makes a false statement that could not have affected the course or outcome of a case, and MATERIALITY is a question of LAW.

Appn.T, a37 to a63 is the evidence of a prima facie case of perjury and false swearing. This is not the entire volume of evidence offered below but it is more than enough to prove a prima facie case of perjury and false swearing against the public official.

A witness states Mr. Kitner acknowledged that the soil removed from the right-of-way was the property of Cheppa (Appn. T1, a37) Kitner testified that the soil used to backfill over the storm drain was the private property of Cheppa (Appn. T2, a38 & a39) another witness stated that Kitner testified that the same soil did not belong to Cheppa but belonged to the Township (Appn. T5, a44) and another witness stated that Kitner testified the same soil did not belong to Cheppa but belonged to the Township (Appn. T6, a45).

On pages 43 - 47, 50 - 54, and 57 of the transcript of July 13, 1988, Kitner testified in direct examination, that he was called to the property of Cheppa because of flooding and heavy rain on August 5, 1983, but due to that heavy rain and his duty under the law, he was forced to use the Cheppa property to stockpile the township dirt which he removed from the right-of-way and used later to cover the storm drain pipe (Appn. T7, a46 - a53). His lawyer in opening

and closing statements offers the perjury that Kitner had just finished elaborating upon (Appn.T8, a54-a55).

A witness states that there was no rain at the Cheppa property before Kitner came to clean the R.O.W. or while he did clean it (Appn. T9, a56). A second witness stated that there was no rain or flooding at the Cheppa property and that Kitner arrived there at 11:40 A.M. (Appn. T10, a57 & a58) a member of Kitner's Road Crew stated that the road-crew left the Cheppa property just prior to their work day ending at 3:30 P.M. (Appn. T12, a60). The daily work sheet from NOAA states that there was no rain either before Kitner came to the Cheppa property or while he was there, or within several hours after he left the property. The times listed there are given in Standard Time while we were on Daylight Savings Time (Appendix Tll, p. a59).

In the transcript of Kitner's testimony it was found that the only things he lied about was the rain; everything else was true and accurate, and listed in (Appn. T13, a61 & a62). Taken to a criminal psychiatrist who studied the evidence, stated that Kitner suffered from no loss of memory when he gave his false testimony concerning the rain of August 5, 1983 or his reasons for coming to the Cheppa property and removing the dirt from the R.O.W. (Appn. T14, p. a63).

Kitner testifies that he had the original copy of a contract (which would tell him where to get the soil to backfill over the storm drain) and that he studied that contract and voted as township supervisor to approve that contract (Appn. T3, a40 & a41) Kitner also testified that he did not have the contract (Appn. T4, a42 & a43).

Kitner's only objective before the district justice was to deceive. Kitner accomplished that with his perjurus testimony. A new case was filed where Kitner told the same story, and since his perjury was believed by the district justice and changed the outcome of that case, it could have also changed the outcome before the arbitrators. The township appealed the matter and it was heard by a judge where Kitner invented the heavy rain and flooding but due to he heavy rain he could not move the dirt to the township stockpile and, by Law was forced to stockpile it on the Cheppa property. Under the law, Kitner did have the right to use the Cheppa land for storage in an emergency condition such as public flooding but there was no rain or flooding.

In its final Opinion to this case, the Common Pleas found that Kitner had been,

"...giving conflicting testimony about the same series of events in different legal forms [forums] over the course of years." (Appn. C, a8).

## PETITIONER'S STANDING

In a dissenting Opinion to Benz (App. FF, a103 - a105) Justice Papadakos of the Pa. Supreme Court has stated that one such as I does not have standing and alleged support for his view by the case of Linda R.S. v. Richard D. and Texas at al (Appn. GG, a106 - a110).

Mr. Justice Marshall, writing for the majority in the Linda R.S. case stated repeatedly that Linda R.S. did not have standing because she was not the victim. Justice Marshall wrote, "..`broadening the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury'...federal plaintiffs must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction.

[4-6] Applying this test to the facts of this case, we hold that, in the unique context of a challenge to a criminal statute, appellant has failed to allege a sufficient nexus between her injury and the government action which she attacks.." (Appn. GG at p. a108). What Justice Marshall is saying is that Linda R.S. was not the injured party, rather, her child was.

"The party who invokes [judicial] power most be able to show that he has sustained or is immediately in danger of sustaining some direct injury as the result of [a statute's] enforcement." (Appn GG, a108 & a109).

Unlike the Linda R.S. case, the case be-fore you now has alleged that this petitioner is the victim of perjury and false swearing by a public official. In an investigative report written by this petitioner and given to the D.A. then later passed through the courts of Penna. this petitioner wrote:

"In 1984, allegations of perjury were made to the D.A. of Dauphin County Pa. against three employees of the West Hanover Township governing body, The allegations were not investigated and

their pursuit was dropped. In 1988 the fourth incident of perjury by a member of the West Hanover Township government surfaced..."

These allegations show not just perjury by the West Hanover Township government, but truly, a conspiracy. A conviction on charges of perjury would have the same affect as a conviction on charges of conspiracy, that is, to have the West Hanover Township government correct its methods of treating its citizens.

In addition to the illness which resulted from the perjury and false swearing and recited by the judge of the common pleas (Appn. C, a7) this petitioner presented a list of monetary damages to the D.A. and the courts below which show a factual loss of $2,910.00 (after repayment for the stolen soil) as a direct result of this public official's taking and using a citizens private property without just compensation, then committing perjury in the courts to protect the theft.

Your petitioner is the victim of the crimes of perjury by a public official and as Mr. Justice White, joined by Mr. Justice Douglas stated in their dissenting Opinion to the Linda R.S. "The court notes, as it must, that the father of a legitimate child, if prosecuted under Art 602, could properly raise the statute's under inclusiveness as an affirmative defense... Presumably, that same father would have standing to affirmatively seek to enjoin enforcement of the statute against him... The question then becomes simply: why should only an actual or potential criminal defendant have a recognizable interest in attacking this allegedly discriminatory statute and not the appellant and her class? They are not, after all, in the position of members of the public at large who wish an enlargement of State criminal laws..." (Appn. HH, a111 - a113).

Therefore, if we follow the recommendations of the dissenting Penna. Supreme Court Justice Papadakos in the Benz case where he paints Linda R.S., "a citizen lacks standing to contest the policy of the prosecuting attorney when he himself is neither prosecuted nor threatened with prosecution..." (Appn. FF, a104). Presumably, then, the accused would have standing to enjoin enforcement of the rule against him for underinclusiveness, the question, then, becomes simply: why should only a criminal have a recognizable interest in attacking an allegedly discriminatory rule or policy and not the victim? Won't that in itself be seen as discriminatory and

unequal protection of the laws, forbidden by the 14th Amendment. The State's public prosecutor's duty in faithfully discharging the responsibilities of that Office is to promote and protect the criminal laws of the State on behalf of the inhabitants of the State, not on behalf of the State, for without the inhabitants, the State is an empty and hollow entity, in no need of protection of the law. And when some inhabitant of the State falls victim to crime, it is the duty of the public prosecutor to take up the cause of the law, and to promote justice for the victim-citizen of the State. Additionally, there is legislative reference to the practice of Private Prosecution, (Appn. QQ, a127 and RR, a128 & a129) and the D.A. has not raised any question of standing in the lower court, failing to preserve such issue for appeal. Trial Court had much to say in effort to belittle this case. It implies that this is an extension of a civil litigation from 1983, but failed to see this is a Criminal suit from as late as 1988. The Court stated, "Thus, the matter would seem, to the law's `reasonable and prudent person' to be at an end." (Appn. C, a7). The "reasonable and prudent person" is a civil standard which the Court has applied as a criminal test, thereby, proving it did not understand the case which resulted in the denial of equal protection of the law and due process of law. A hearing on the matter would have benefited the Court in justly determining the nature of this case but the Court denied a hearing.

The Court seems to be of the opinion that because this petitioner ultimately was paid the value of the soil taken without just compensation by the government, the resulting harm to the Affiant should be settled through some civil litigation. The Court fails to see that the Affiant's being paid the value of the soil does not negate the crime of perjury. The Court has failed to understand that this was not a case brought against a citizen, it was a case brought against a public official; against the government for the hideous crimes of perjury and false swearing.

The Trial Court states: ..these... prosecutions have no place in the county's extended justice system..." (Appn. C, a6). However, I would think that this crime, conceived in conspiracy; nurtured through fraud and deceit; and implemented by Government, has no place in our society!

The Court has failed to see that failure to prosecute public officials for their perjury has served to perpetuate the criminal

behavior on the part of the government. And the Court has failed to under stand that being paid the value of the soil in the face of perjury by the government does not "promote the general welfare" nor "establish justice", for the value of all of the soil in the County could never equal the justice and privilege of liberty granted to this individual by the Constitution. Of these Criminal Complaints, the Trial Court has stated, "...the legislature was wise in providing that...the attorney for the Commonwealth must approve or disapprove a private criminal complaint and the courts who have construed this rule provided that the district attorney shall make his decision in the exercise of his prosecutorial discretion..." (Appn. C, a8). The judge is wrong. What the courts have said is f the D.A. raised prosecutorial discretion in the lower court it would hold on appeal" (Appn. DD a95) but the D.A. never did raise that in the lower court and the legislature has never given the D.A. prosecutorial discretion. There is no Penna. law which gives the D.A. prosecutorial discretion, for to do so, is repugnant to the separation of powers doctrine of the Constitution; prosecutorial discretion in the Office of the D.A. places judicial authority in the hands of the Executive branch of government and the perjury law itself states that the determination of materiality is a judicial function not for executive interpretation (Appn. P, a29) and that issue was raised in the Supreme Court (Appn. LL, a117 & a118).

Trial Court alluding to the courts giving prosecutorial discretion to the D.A. when it is raised at the trial court level is correct, but this is not Rule by Law, it is, Law by Rule. And not by written rule, but by erroneous judicial interpretation of a Criminal Rule of Procedure.

This case was brought to the Court by Rule 133 b2 of the Pa R. Crim. P. (Appn. M, a27). The provisions of Rule 133 are not new, it is a practice that has existed in England and Other countries for hundreds of years prior to the establishment of our own Federal System and subsequent Constitutional systems of government. What is new, and unconstitutional, is bestowing prosecutorial discretion upon the D.A.

It was not until the 18th century that a system of public prosecution began to emerge in America, see: The Crime Victim in the Prosecutorial Proses 9 Harv. J.L. & Pub. Pol'y 357 (1986).

Although such a system of public prosecution began to develop to enable the victims of crime in pursuit of justice, the several States maintained an avenue for private individuals to seek justice either by assisting the public prosecutor or going forward and initiating criminal proceedings himself: See Private Prosecution: A remedy for District Attorney's Unwarranted Inaction, 65 Yale L.J. 209 (1955). The first public official in Pennsylvania given the role of public prosecutor was the Attorney General, an arm of the Executive branch of government. Subsequently, in 1850, the Offices of Deputy Attorney Generals were created through legislation and these were followed by current legislation (16 P.S. ss 1401 et seq.) providing for a local D.A. to prosecute criminal cases on behalf of the public (see Commonwealth ex rel. Spector v. Bauer, 437 Pa. 37, 261, A 2d 537 (1970). Notwithstanding, the advancement of a public prosecutor, Pennsylvanians have always retained the right to private prosecution, not only through Rule 133, but through legislative enactment (16 P.S. ss 1409. Appn. QQ, a127 ). That provision is a follow up to the Act of March 12, 1866, P.L. 85, ss1 (Appn. RR, a128 & 129) which provides for a private individual to bring criminal proceedings, or replace a D.A. when he "...shall neglect or refuse.." to discharge his duties. The Constitutionality of that provision was upheld in the case of Commonwealth v. McHale, 97, Pa. 397 (1881) where the Supreme Court of Penna. ruled that a private individual can act in the D.A.'s stead.

The point here, is that the D.A. has never had prosecutorial discretion in Pa. regarding a prima facie case to the extent that he may deny the equal protection of the laws to any victim of crime. More recently, in the case of Benz (Appn. EE, a99 - a102) Justice Larsen has stated that Rule 133 of the Pa. R. Crim. P. does not give the D.A. prosecutorial discretion: "Rule 133 does not contemplate that criminal proceedings initiated by private complaint will be subject to the `policy' and discretion of the D.A." (Appn. EE, a100).

Therefore, the D.A., in faithful discharge of his duties, had no alternative but to "evaluate the responsibility of the charge contained in the complaint ..." (Appn. EE, a101) as raised by Justice Larsen, and approve the complaint. To do otherwise is a violation of the U.S. Constitution and specifically repugnant to the 14th Amendment and the "equal Protection' and "due process" clauses.

In the Benz case, the Constitutional issue of separation of powers

between the executive and judicial branches of govern ment was not raised in the Court of First Instance but was raised on appeal (Appn. DD, a94 & a95). The D.A. of Allegheny Co. joined by the Amicus Curiae presented policy reasons, and prosecutorial discretion based on the Constitutional issue of separation of powers as the cause for refusing to prosecute Officer Benz. The Penna. Supreme Court stated that if policy reasons had been raised in the court below, it would hold on appeal, but since it had not been raised below, the question was waved on appeal (Appn. DD, a95).

On November 1, 1989, the majority of the Penna. Supreme Court ruled in the Benz, where a prima facie criminal case was brought to a D.A. by private criminal complaint, the D.A. could not refuse to prosecute on the grounds of a lack of evidence (Appn. DD, a95). In the present case, the petitioner brought 2 prima facie cases to the D.A. and he refused to prosecute on the grounds of a lack of materiality (Appn, F, .a15 & H, a20) which he supported by an alleged lack of evidence: "The information that he [Mr. Cheppa] has provided to the D.A.'s Office does not establish, beyond a reasonable doubt, criminal charges against Mr. Kitner... The D.A. has reviewed the material provided to this Office by Mr. Cheppa. The falsification that Mr. Cheppa is claiming by Mr. Kitner, does not affect the material out come or the course of the proceedings..." (Appn. R, a34).

When the D.A. referred to his, "discretion to approve or disapprove private criminal complaints" he was referring to discretion to evaluate the evidence and not separation of powers or prosecutorial discretion, or some other alleged policy.

The test of this statement an be found on page 9 of the D.A.'s brief to the State Superior Court reprinted here in Appn. KK, a116. There he first refers to prosecutorial discretion as a policy reason, saying that it was raised in a letter denying the 2nd criminal complaint.

That letter is found in (Appn. F, a15) and no policy reason or prosecutorial discretion or separation of power can be found there. When the D.A. states in that letter: "I feel that your latest criminal complaint is an obvious attempt to circumvent the Order of Judge Herbert Schchaffner..." he is expressing that as a fear of circumventing an earlier Order, and he is not expressing it as a policy.

If the D.A. had intended that the above statement serve as his

policy statement, or prosecutorial discretion statement, or separation of powers statement, I suspect that he would have to put it in writing at the time he made the statement. If it can somehow be construed that the D.A. raised policy reasons, or separation of powers, or prosecutorial discretion in his answer to the 1st complaint (which your petition er denies that it can) still the D.A. presented no answer or any kind of paper to the 2nd complaint and he did not appear in court to argue Exception, therefore, the lower court and the appellate court should have overruled the D.A. on the 2nd complaint. These were two distinct and different cases. The only similarity was that they were both criminal complaints against the same public official. Otherwise, each case was independent of the other as is witnessed by (Appn. G and H, al6 - a22). Certainly, it cannot be argued that the answer to a criminal complaint filed on January 4, 1991, also serves as answer to a different complaint filed on May 20, 1991. If that had been the intent of the D.A., wouldn't he have to tell somebody. Both criminal complaints were brought pursuant to Pennsylvania's perjury and false swearing Act found in (Appn. P, a29-a31). Part b of that Act (p. a29) states that a question of materiality is for the court to determine, not the D.A. Therefore, even if the D.A. had raised separation of powers in reply to any or all of these criminal complaints, he could not invoke prosecutorial discretion while basing his denial of these complaints on a lack of materiality as he did. The law specifically states that materiality is not within his discretion to decide. This argument was set before the Supreme Court of Penna. in the Application for Appeal (Appn. LL, pp. a117 & a118).

If the court of last resort in Penna. had intended that the Executive Office of the D.A. was to assume this judicial function, and since the issue was raised in that court, the separation of powers doctrine of the State and U.S. Constitutions must be invoked. Such assumption of power on the part of the D.A. renders him both, prosecutor for the State (an executive function) and judge on the issue of materiality (a judicial function). Such was not the intent of the founding fathers.

Rule 133 (Appn. M, a27) was the authority by which the issue of perjury was brought to the D.A. In the proceedings below, we have repeatedly requested an evidencing hearing. In the Order of

February 26, 1991, the Court said that a hearing in the matter would not be entertained (Appn. SS, a130). We objected to the lack of a hearing in Exception No. 4 to the Trial Court, in the Brief to that Exception, in the Memorandum to the 2nd Criminal Complaint, and in Question No. 4 to the Appellate Court. (Appn. TT, a132 - 134).

These demands have all been denied, presumably because Rule 133 does not specifically state that the court must grant a hearing. On the other hand, however, neither does Rule 133 grant prosecutorial discretion to the D.A., but the Court has neglected to see this.

Regardless of how the courts below have impoverished this petitioner of the justice, equal protection of the law, and the privileges of liberty under the Bill of Rights by editorially sweeping the crimes of perjury by the government away, the issue boils down to just one narrow fact, the fact that these rulings of Court are an attempt to remove same of the judicial burden placed upon the State courts.

The test of this statement can be found in the Trial Court's final Opinion (Appn. C) at a6 where it is stated that, "...this case [of perjury by a governmental official] has no place in the justice system..." p. a8 where the Court states: '..this case [of perjury by a governmental official] is less important than any other criminal case in the county." It can also be found in the dissenting Opinion to the Benz case (Appn. FF, a103 & a104) where State Supreme Court Justice Papadakos states, "...a D.A.'s power to approve or disapprove private criminal complaints is consistent with that office's unreviewable authority... History, logic and efficiency require that this limitationon a prosecutor's discretion must be read as narrowly as possible least we make the already overburdened criminal justice system wholly impossible to administer." What he and the courts of Penna. refuse to realize is the fact that failure to prosecute a governmental official for the crimes of perjury is, in itself a brake down of the criminal justice system. Covering up the crime does not give rise to unreviewability by the courts. Nor does neglect in prosecuting private criminal complaints alleging prima facie cases of criminal activity make the Pennsylvania judicial system whole again.

What Justice Papadakos and the courts below neglect to under-

stand is that crime, and, therefore, the administration of law through the judicial system can best be controlled through weeding out and prosecuting the criminals, especially the criminally inclined governmental officials who seem to think that they are above the judicial system and accountable to no authority, whether legislative or constitutional. Had the Affiant's 1984 allegations of perjury been prosecuted, the '88, perjury would not have occurred. But failure and neglect in lawfully discharging the duties of the Office of District Attorney, encouraged the further perjury by that government. Penn. courts are wrong, to think that encouraging perjury through failure to prosecute will curtail crime. On the other hand, perhaps curtailing crime is not the object, perhaps all the courts want is a clear court calender.

With all of the negative remarks and characterization of the Affiant by the Trial Court in its Opinions to this case, the fact remains that the Trial Court accepted false ex parte communications from the D.A. and refused to correct the matter through a hearing of the Criminal Complaints. At the trial Court level and again in the Appellate Court, we had pleaded for an evidencing hearing. Not simply to air our prima facie case of perjury but as evidenced by Appn. TT, a131-a134, to respond to the false ex parte communications which the D.A. held with the court, and to enlighten the Court as to the true facts of the issue and, thereby, allow the Court the opportunity to correct the errors of its first Opinion.

We had not known of the false information presented to the court by the D.A., in fact, we had not known that anything was presented until it was revealed in the Court's Opinion, therefore, our opposition was voiced in the Exceptions. By vertu of those Exceptions (Appn. TT, a131-a133) the Court learned that the D.A.'s Memorandum was filed ex parte, and that the evidence supplied in that ex parte communication was false.

The false ex parte communications by the D.A. evidences a cover-up of the crimes of perjury by a public official, and a mis-carriage of justice. Indeed a denial of due process of law and equal protection of the law, for now, upon the presentation of Exceptions, both the D.A. and the Court knew that the communications of the D.A.'s Memorandum was ex parte, and false. The Court, in denying a hearing, failed to see the true evidence in the context presented, further illustrating the intent of the Common Pleas to put the

Affiant out of Court, and deny the justice demanded by the U.S. Constitution.

Throughout its Orders the Court displays a lack of understanding as to why this citizen pursues the issue of perjury by a governmental official. Perhaps the Court is not familiar with the writings of the founder of our Commonwealth where he William Penn in his book entitled, The Excellent Privilege of Liberty and Property being the Birth Right of Free-Born Subjects of England. has written: "understand, that it is easy to part with or give away great privileges, but hard to be gained, if once lost. The full text of this statement is found in Appn. VV, a136. It is the pursuit of justice, equal protection, and the privileges under the Bill of Rights that brings this case for they, "Will be hard to be gained if once lost"

The Commonwealth of Pennsylvania has violated this petitioner's 14th Amendment rights to equal protection of the law, de proses of law, and privilege under the law of bringing the case to a grand jury pursuant to the 5th Amendment which is made applicable through the 14th Amendment.

It is deceitful for the lower courts to state that review of a private criminal complaint by a judge of the Court of Common Pleas checks and balances the decision of the D.A. The instant case proves that the judge of the Common Pleas is nothing more than a stamp for the D.A.'s decision.

In this case where the D.A. had not pleaded prosecutorial discretion through separation of powers it was given to him by the judge. Where the accused was alleged to have knowingly made false statements under oath (Appn. H, a20 & a21) the judge stated that the allegation was never made (Appn. E, a13). Where an overwhelming amount of evidence was brought to support a prima facie case of perjury against the accused (Appn. T, a37 - a63) the judge stated that a crucial element of verification was not presented (Appn. E, a13). The D.A. held ex parte communications with the Court and the D.A. has admitted to the Superior Court that he filed his Memorandum without copying the Affiant (Appn. S, a36). Would this Honorable Court accept any papers not served upon the opposing party? The D.A.'s argument that the Affiant was required to go to the Clerk of Court's Office daily to check the docket for a filed Memorandum is preposterous. Such a burden

has never been required of any party to a criminal proceeding. The Penna. Rule of Professional Conduct No. 3.5 entitled "Impartiality and Decorum of the Tribunal. A lawyer shall not: a. Seek to influence a judge, juror, prospective juror or other official by means prohibited by law. b. Communicate ex parte with such a person except as permitted by law." Rule 9023 of the Pa. R. Crim. P. state: "Except as otherwise provided in these Rules, all written motions, and any notice or document for which service is required, shall be served upon each party concurrently with filing." Rule 9022 of the Pa. R.Crim. P. states: "Except as otherwise provided in these rules, all written motions, and any notice or document for which filing is required, shall be filed with the Clerk of Court." Because the Trial Court Ordered the D.A. to file a Memorandum and because it was filed pursuant to Rule 9022, Rule 9023 required that the document also be served on the Affiant. The court relied upon the D,A,'s allegations (which Cheppa has not seen) that the whether records evidence that it was raining on August 5, 1983. As such, the trial Court's Order was tainted by the false ex parte communication of the D.A. as can be seen in the judge's Opinion (Appn. E, a13) where he states: "The affiant has not attached any verification of weather conditions...that the witness made an untrue statement under oath that it was raining on that day. ...the Commonwealth has attached to its memorandum a copy of the climatological data for the Capital City Airport...which shows that the Harrisburg area received rain on that date." The falsity of that statement is proven by (Appn. T9, a56; T10, a57, T11, a59, and T12 a60) where two witnesses state that there was no rain at the Cheppa property while the accused was there, and, that the accused arrived at 11:40 A.M. and was finished with the work at 3:30 P.M. The record from NOAA proves there was no rain. The fact that it began to rain after 6:00 P.M. had no bearing on the alleged perjury by the accused stating that he went to the Cheppa property "...during and because of heavy rain and flooding.." (Appn. T7, a46 - a53) and the D.A. was well aware of that fact because I personally showed him the NOAA work sheet and the remaining evidence plus photographs, proving that there was no rain that day at the time in question.

If this prima facie case of perjury against a public official had been brought to a grand jury as was argued in Affiant's Exceptions (Appn. X, a73 & a75) the accused would have been prosecuted and

justice would have been served.

It is common knowledge that the 5th Amendment to the U.S. Constitution is made applicable to the States through the 14th Amendment, but we can go further. William Penn - Founder of Pennsylvania - writing in his book, The Excellent Privilege of Liberty and Property Being the Birth Right of Free Born Subjects of England, stated that a part of the privilege of liberty was the grand jury. The grand jury is also found in the Pennsylvania Charter of 1701, and it is found in the Federal Bill of Rights, specifically, the Fifth Amendment. William Winslow Crosskey has researched the U.S. Constitution and its Amendments for a period of more than 30 years before writing the 1st two volumes of his book, Politics and the Constitution, in the history of the United States. A professor of Law at the University of Chicago, Crosskey undertook this endeavor, not simply, to meet some predetermined conclusion of his, but to gain a solid insight to the true meanings and full intent of those documents. Throughout his writings, whenever he speaks about the 1st eight Amendments to the U.S. Constitution, the evidence he has uncovered show two facts; 1) Where the Amendments are written in general terms, they apply fully to both, the National Government and the State Government. 2) Where the Amendments are written specifically for direction of the National Government, it applies only to the U.S. The full text of Crosskey's statement on pages 1075 and 1076 of his 2ed volume is reprinted in Appn. WW, a137 & a138.

Much could be quoted from Professor Crosskey's research to support the instant Petition before you today, not only did these Amendments apply to the States, but many of the States wanted those Amendments of Federal controls on the States because only about half of the States had a Bill of Rights, and those that did, did not have the wherewithal to enforce those Rights (Crosskey at 1061 to 1064).

The Fifth Amendment is written in those general terms: "No person shall be held to answer...". Had this amendment been included to apply only to the National Government, it surely would have read something like: "Congress shall pass no law holding a person to answer...".

When speaking about the grand jury clause in the 5th Amendment, the 5th Amendment confers prosecutorial discretion only

upon a grand jury. The 5th Amendment was so framed for several reason. The 5th Amendment's intent was to devise a criminal system that was fair to the accused and to the victim of the crime; to take the inditing proses out of the hands of any one man; and to make the inditing process uniform in every State and Territory. For those reasons the inditing process was given to a cross-section of the accused's and victim's piers, providing part of the justice and perfect Union clauses of the Constitution's preamble.

Granting prosecutorial discretion to the State Prosecutor reverses the full intent of the grand jury clause in the 5th Amendment and, thereby, reverses the 5th Amendment itself. By granting prosecutorial discretion to the D.A., no longer can the inditing proses be fair to the accused and to the victim. No longer can the standards and elements of indictment be uniform, and no longer is an accused individual prosecuted or released by a cross-section of his piers, because granting prosecutorial discretion to the D.A. effectually places the inditing process back into the hands of one person.

Some may say that the 5th Amendment applies only to the accused in criminal cases. As previously recited, the 5th Amendment was written to privilege both, the accused, and the victim. However, there is further argument on this point as is found in Mr. Justice White's dissenting Opinion to the Linda R.S. case (Appn. HH, a111 & 112). "The Court notes as it must ..." that a criminal indited by a grand jury under the 5th Amendment, could properly raise the Amendment's underinclusiveness as an affirmative defense. Presumably, that same Criminal defendant would have standing to affirmatively seek to enjoin enforcement of indictment by a grand jury. The question then becomes simply: Why should only the actual criminal defendant have a recognizable interest in attacking this allegedly discriminatory Amendment and not the victim and his class?

After the Barron v. Baltimore case and some other erroneous rulings by the Supreme Court of the time, many of the States began to disregard the Federal Bill of Rights. This was especially prevalent just before, during, and immediately after the Civil War. To correct this lack of proper behavior on the part of the States, the 14th Amendment was ratified. Section one of that Amendment specifically gives to each Citizen of every State the rights and

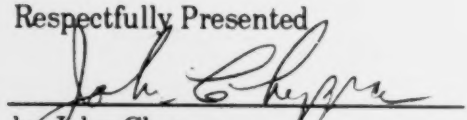
privileges of the Federal Bill of Rights: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."

That clause bestows dual and equal citizenship on all of the American people, thereby, ending all arguments as to who was covered by the Section and what the coverage was. Because, the second part reads: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The privileges and immunities spoken about here are those of the Federal Bill of Rights, these clauses forbid the States from depriving any of the Federal Bill of Rights to any U.S. Citizen. Who are these U.S. Citizens? You and I, the Citizens of the States are the Citizens of the United States. So states, the 14th Amendment.

As found in the Text by: Michael Kent Curtis, No State Shall Abridge the Fourteenth Amendment and the Bill of Rights, "So far, at least, the broad call to free the States from the commands of the federal Bill of Rights has received very little encouragement from decisions of the Supreme Court ... [t]he court can change direction - if it chooses - and allow States to violate the Bill of Rights. It cannot, however, justify this result by a fair reading of history."

In view of the forgoing, it is requested that these Constitutional issues of separation of powers under the Constitution, the Privileges of Liberty under the Bill of Rights and the 5th Amendment, the Due Process and Equal Protection under the 14th Amendment and the conflicting Order regarding the Separation of Powers and Prosecutorial discretion in this case with that rendered in Benz., be placed on the court calendar for hearing at the October 1993, term by this Honorable Court.

Respectfully Presented



by John Cheppa
7176 Catherine Drive
Harrisburg, Pa. 17112-3618
(717) 545-5744

APPENDICES ai


| Appendix | | Page |
|---|---|---|
| A | Feb. 11, 1993. Order of Penn. Supreme Court Denying Affiant's Application for hearing. | a1 |
| B | May 28, 1992. Opinion and Order of Penn. Superior Court. | a2 |
| C | July 19, 1991. Final Opinion and Order of Trial Court. | a4 |
| D | June 26, 1991. Second Opinion and Order of Trial Court. | a9 |
| E | Apr. 23, 1991. First Opinion and Order of Trial Court. | a10 |
| F | May 23, 1991. Second Order of District Attorney. | a15 |
| G | May 20, 1991. Allegations of perjury in second complaint TO D.A. | a16 |
| H | Nov. 20, 1991. First Complaint to District Attorney. | a20 |
| H | Nov. 29, 1990. First order of District Attorney. | a20 |
| J | Jurisdiction Act. 18 U.S.C. ss 1257 | a23 |
| K | Amendment V to the United States Constitution | a24 |
| L | Amendment XIV to the United States Constitution | a25 |
| M | Rule 133 of the Pennsylvania Rules of Criminal Procedure | a27 |
| N | Rule 134 of the Pennsylvania Rules of Criminal Procedure | a28 |

| | | |
|---|---|---|
| P | Pennsylvania perjury and false swearing Act of 1972, Dec. 6, P.L. 1482, No. 334, ss 1. I8 Pa, C.S. ss 4902 and 18 Pa. C.S. ss 4903 . | a29 |
| Q | Jan. 4, 1991. US Constitution raised in First Complaint to Trial Court, #M.D. 12, 1991. | a32 |
| R | Jan. 14, 1991. District Attorney's Answer to US Constitution. | a33 |
| S | Dec. 5, 1991. District Attorney's alleged excuse to Supreme Court for ex parte communications. | a36 |
| T | Affiants evidence of perjury | a37 |
| T1 | Witness' statement of Kitner-Cheppa Agreement that soil from the right-of-way belonged to Cheppa. | a37 |
| T2 | Kitner testimony given under oath on August 2, 1986, that he used Cheppa soil to backfill over a public storm-drain pipe. | a38 |
| T3 | Kitner testimony given under oath on August 26, 1986, stating that he had the Original Copy of the Cheppa Contract, that he studied it very carefully and that he voted [as Township Supervisor] on that Contract, and approved it. | a40 |
| T4 | Kitner testimony given under oath on July 13, 1988 stating that he did not have the Cheppa Contract. | a42 |
| T5 | Witness' statement, Metro Lynn stating that Kitner testified under oath on July 21, 1987, in case No. TA 87-427 that he did not use Cheppa soil to backfill over a public storm-drain pipe. | a44 |

| | | |
|---|---|---|
| T6 | Witness' statement, Lynn Uria stating that Kitner testified under oath on March 28, 1988, in case No. 3171 5 1987 that he did not use Cheppa soil to backfill over a public storm-drain pipe. | a45 |
| T7 | Kitner testimony given under oath on July 13, 1988, stating that he removed the soil from the right-of-way because of flooding and heavy rain on August 5, 1983. | a46 |
| T8 | Township Attorney opens and closes his argument at a bench trial on August 5, 1988 based upon Kitner's perjury about rain and heavy flooding on August 5,1983. | a54 |
| T9 | Witness' statement, John Robinson stating that there was no rain at the Cheppa property on August 5, 1983 while Kitner and Township Road Crew was there. | a56 |
| T10 | Witness' statement, Mr. Linker - Township Official - stating that there was no rain on the Cheppa property on August 5, 1983 while Kitner and Township Road Crew were there. | a57 |
| T11 | Official weather records from the National Oceanic and Atmospheric Administration of the Harrisburg Penna. Area on August 5, 1983 showing no rain while Kitner and the Township Road Crew were at the Cheppa property. | a59 |
| T12 | Witness' statement Paul Carl | a60 |

| | | |
|---|---|---|
| | Township Road Crew Worker stating the approximate time the Township Road Crew left the Cheppa property on August 5, 1983. | |
| T13 | List of truthful testimony given under oath by Kitner on July 13, 1988. | a61 |
| T14 | Statement from Criminal psychiatrist, Paul Phillips stating that Kitner did not suffer memory loss on July 13, 1988 when he testified in Court. | a63 |
| U | May 3, 1991. US Constitution raised in First Complaint AND First Exceptions. | a64 |
| V | June 7, 1991. US Constitution raised Brief to First Exceptions. | a65 |
| W | June 19, 1991. US Constitution raised in Second Complaint to Trial Court. | a69 |
| X | June 19, 1991. US Constitution raised in Second Memorandum to Trial Court. | a70 |
| Y | July 1, 1991. US Constitution raised in Second Exceptions. | a76 |
| Z | July 10, 1991. US Constitution raised in Brief to Second Exceptions | a77 |
| AA | Nov. 6, 1991. US Constitution raised in Brief to Superior Court of Pennsylvania. | a78 |
| BB | June 29, 1992. US Constitution raised in Application to Supreme Court of Penna. | a84 |
| CC | Pennsylvania's Statute of Limitations. | a87 |

| | | |
|---|---|---|
| DD | Majority Opinion in Benz | a89 |
| EE | Concurring Opinion in Benz. | a99 |
| FF | Dissenting Opinion in Benz. | a103 |
| GG | LINDA R.S. Appellant, v. RICHARD D. AND TEXAS et al. 410 US 614, 35 L Ed 2d S36, 93 5 Ct 1146. | a106 |
| HH | LINDA R.S. Appellant, v. RICHARD D AND TEXAS et al. 410 US 614, 35 L Ed 2d 536, 93 5 Ct 1146. Mr. Justice White, with whom Mr. Justice Douglas Joins, Dissension. | a111 |
| JJ | LINDA R.S. Appellant, v. RICHARD D. AND TEXAS et al. 410 US 614, 35 L Ed 2d 536, 93 5 Ct 1146. Mr. Justice Blackmun, with whom Mr. Justice Brennan Joins, Dissension. | a114 |
| KK | DISTRICT ATTORNEY'S FIRST CLAIM TO PROSECUTORIAL DISCRETION BASED ON POLICY REASON: page 8 of D.A.'s reply to Appellate Court. | a116 |
| LL | PETITIONER'S OBJECTION RAISED IN SUPERIOR COURT TO D.A.'s USURPATION OF JUDICIAL FUNCTION. | a117 |
| MM | March 17, 1993, Notice of Appeal. | a119 |
| NN | March 30, 1993, Petition to U.S. Supreme Court for additional time for filing. | a121 |
| PP | April 7, 1993, Order of U.S. Supreme Court extending time for filing. | a126 |

| | | |
|---|---|---|
| QQ | Pa. 16 P.S. ss 1409. | a127 |
| RR | Act of March 12, 1866, P.L. 85, ss 1. | a128 |
| SS | Common Pleas Denial of Hearing. | a130 |
| TT | Affiant's request for hearing in Exceptions to M.D.12, in Brief to Exceptions, in Memorandum to M.D. 455 | a132 |
| UU | 42 PA. C.S.A. ss742 Appeals from courts of Common Pleas | a135 |
| UU | Pa. Rule of Appelate Procedure | a135 |
| VV | William Penn The Excellent Privilege of Liberty | a136 |
| WW | W. W. Crosskey Politics and the Constitution | a137 |

APPENDIX A

COMMONWEALTH OF PENNSYLVANIA
V.
STANLEY KITNER

NO. 0242 M.D. ALLOCATUR 1992

Dear Petitioner:

This is to advise that the following
Order has been endorsed on the Petition
for Allowance of Appeal in the above-captioned matter:

02/11/93
Petition Denied.
Per Curiam

PROTHONOTARY'S OFFICE
SUPREME COURT OF PENNSYLVANIA

APPENDIX B

IN THE SUPERIOR COURT OF PENNSYLVANIA

NO. 498 HARRISBURG 1991

COMMONWEALTH OF PENNSYLVANIA

APPELLEE

V.

STANLEY KITNER

APPEAL OF: JOHN CHEPPA

Appeal from the Order of the Court of Common Pleas of Dauphin County, Criminal Division at No. 12 M.D. 1991: 455 M.D. 1991.

BEFORE: POPOVICH, HIDOCK and HESTER, JJ.

MEMORANDUM: FILED: May 28, 1992

This is an appeal from the order of the Court of Common Pleas of Dauphin County entered on July 17, 1991, dismissing appellant's exceptions to the court's prior orders which affirmed the District Attorney's rejection of appellant's private criminal complaints against Stanley Kitner. Herein, appellant raises numerous allegations of error on the part of the trial court. All of which we find to be meritless.

The trial court, in its independent review of the private criminal complaint, should not interfere with the exercise of

APPENDIX B

prosecutorial discretion unless it is determined that there has been a "gross abuse of discretion". Commonwealth v. Pritchard, Pa. Super. 596 A.2d 827, 833 (1991). Having reviewed the record and the parties' briefs, we agree with the lower court that the District Attorney properly refused to prosecute appellant's private criminal complaint.

Since the decision of the court below properly dispose[d] of this appeal, we affirm and adopt the opinion of the Honorable Herbert A. Schaffner as our own for the purpose of allocatur.

Order affirmed.

Judgement entered
dated: May 28, 1992

Deputy Prothonotary

APPENDIX C

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY PENNSYLVANIA

No. 12 M.D. 1991
No.455 M.D. 1991

COMMONWEALTH OF PENNSYLVANIA

vs

STANLEY KITNER

OPINION

Pennsylvania Rule of Criminal Procedure 133 provides that a private person shall submit a proposed criminal complaint to the attorney for the Commonwealth who shall approve or disapprove the complaint. Further, the rule provides that if the Commonwealth's attorney disapproves the complaint and states the reasons for his action, the affiant may file the complaint with a judge of the court of common pleas for approval or disapproval. Pennsylvania case law has provided that the district attorney shall exercise discretion concerning whether to approve the proposed criminal complaint or not and the common pleas court only oversees the act of the district attorney in order to determine whether there has been a gross abuse of the Commonwealth attorney's discretion. Commonwealth v. Muroski, 352 Pa. Super. 15, 506 A.2d 1312 (1986); Commonwealth v. Eisemann, 308 Pa. Super. 1, 453 A.2d 1045 (1982); and Commonwealth v. Malloy, 304 Pa. Super. 297, 450 A.2d 689 (1982).

In the matters before us, Mr. John Cheppa has sought to have the District Attorney of Dauphin County approve Mr. Cheppa's

proposed criminal complaint against Stanley Kitner. The first proceeding is indexed to No. 12 M.D. 1991 and District Attorney Lewis rejected Mr. Cheppa's suggested complaint in that proceeding. Mr. Cheppa appealed to the Court and we dealt with that in an Opinion and Order dated April 23, 1991. Mr. Cheppa. Through counsel, filed exceptions to that decision and on May 20, 1991, we established a briefing schedule for counsel and, subsequently, oral argument was scheduled for July 10, 1991. Then, on May 20, 1991, Mr. Cheppa presented a second proposed private criminal complaint to District Attorney Lewis, again seeking approval of the institution of a criminal action against Stanley Kitner. We are advised that the District Attorney rejected this proposed criminal complaint on May 23, 1991 and that act resulted in Mr. Cheppa filing a petition for approval of private criminal complaint with this Court on June 19, 1991. The matter was referred to us and we, by Order dated June 26, 1991, upheld the act of the District Attorney relative to his disapproval of the suggested prosecution. Exceptions were then filed to the latest Order referred to by the Court, to No. 455 M.D. 1991, and a request was then made that these latter exceptions, as well as the exceptions to our earlier Opinion and Order docketed to No. 12 M.D. 1991, be consolidated for argument. We granted that request and ten granted a further request made to us on July 10, 1991, continuing the argument on these matter[s] until July 16, 1991.

We have reviewed all of the documents before us, and are absolutely satisfied a that the district attorney properly

exercised his discretion and that these suggested prosecutions have no place in the county's extent[ed] justice system. It takes very little to illustrate the correctness of this latter statement. This case, and all of the matters related to it which have been in this county's court system in recent years, stem from an incident that occurred on August 3, (sic) 1983, eight years ago. A township employee, Stanley Kitner, was responsible on that day for removing soil from a township right-of-way and depositing it on the land of John Cheppa. Subsequently, that same soil was removed from Cheppa's land and placed elsewhere, not on his property.(sic) Mr. Cheppa took offense to the removal of his soil and a number of legal proceedings resulted therefrom. There were at least two proceedings before a district justice, a proceeding before a Board of Arbitrators in Dauphin County, a hearing in equity before one of the members of this Court and finally, a hearing before another member of the Court on an appeal from the decision of the Board of Arbitrators that we have referred to. Mr. Cheppa alleges that Mr. Kitner has committed acts of perjury and has made false statements under oath in these proceedings. Mr. Cheppa says that Mr. Kitner testified falsely about whether or not it was raining on August 3, (sic) 1983, to whom the soil belonged that was taken from the right-of-way in front of Cheppa's property and, finally, about a contract that had existed between he township and Mr. Cheppa. We do note that in the civil proceeding, in which Mr. Cheppa claimed that the township owed him the money s worth of the soil that was taken. Cheppa prevailed, got a judgment for the amount of the soil, $2,540.61, and has been paid. Thus, what-

ever misstatement Mr. Kitner may have made about the soil, or the contract, or the rain, Mr. Cheppa was reimbursed for the soil that was ultimately found to have been improperly taken. Thus, the matter would seem, to the law's "reasonable and prudent person," to be at an end. But it is not and the matter is obviously, for reasons unknown to us, much more important to Mr. Cheppa. In his brief before us on the question of his exceptions to our April 1991 ruling, Cheppa alleges that ill health has been brought to him because of Mr. Kitner's "perjury and false swearing." Cheppa states that he "can no longer eat sweet-corn, he can no longer eat sweet-peas, he can no longer eat onions,..." In fact, it is very clear that Mr. Cheppa has taken this matter as such a personal affront to him that he has no reasonable perspective of the incident. To quote further from his brief to us, to demonstrate this lack of perspective, the following statements are instructive:

"This is not a case such as a domestic relations issue where one spouse lied in court against the other. This is not a case where there is no victim. This is a case where the local government of West Hanover Township (in the name of Stanley Kitner) stole a citizen's dirt. Then, he used citizen's tax payments and hired a lawyer to protect his theft. He went into court with perjury and false swearing where he knowingly lied against one of the citizens of his community." "Mr. Kitner has abused that trust by stealing a man's dirt, then using citizens tax monies, he went into court with perjury to protect that theft."

## APPENDIX C

As we have noted, the district attorney is to exercise his discretion in approving or disapproving a proposed private criminal complaint. That discretion is discretion in a purely legal sense and involves a decision-making process bounded by the rules and principles of criminal law, and may not be a decision made in an arbitrary, capricious, or unrestrained manner. Black's Law Dictionary, 4th Edition, Page 553. We are, of course, keenly aware that the county's judicial system is "teeming" with criminal matters and we can think of none that are less important than Mr. Cheppa's own concern about an individual, who must be his earnest adversary, giving conflicting testimony about the same series of events in different legal forms [forums] over the course of years. We can only conclude that the legislature was wise in providing that, in serious cases, the attorney for the Commonwealth must approve or disapprove a private criminal complaint and that the courts who have construed this rule provided that the district attorney shall make his decision in the exercise of his prosecutorial discretion. We are satisfied that the district attorney has not abused his discretion at all in this case and we dismiss the exceptions filed to both of this (sic) docketed proceedings. Accordingly, we enter the following

ORDER

AND NOW, this 19 day of July, 1991, the exceptions to our April 23, 1991 order and to our order of June 26, 1991 are dismissed.

APPENDIX D

IN THE COURT OF COMMON PLEAS DAUPHIN COUNTY PENNSYLVANIA

No. 455 M.D. 1991

- COMMONWEALTH OF PENNSYLVANIA

vs

STANLEY KITNER

ORDER

AND NOW, this 26th day of June, 1991, the petition of John Cheppa to have the Court Approve a proposed Private criminal complaint in this matter is denied, and the act of the District Attorney of Dauphin County, in his prior disapproval of the suggested prosecution, is upheld.

BY THE COURT:

Herbert A. Schaffner, Judge

APPENDIX E

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY PENNSYLVANIA

No. 12 M.D. 1991

COMMONWEALTH OF PENNSYLVANIA

vs

STANLEY KITNER

OPINION

John Cheppa filed a petition for approval of private criminal complaint. In this petition, Mr. Cheppa states that on November 23, 1990, he presented a proposed criminal complaint to Dauphin County District Attorney Richard A. Lewis for approval in accordance with Rule of Criminal Procedure 133(a). The proposed criminal complaint alleges that Stanley Kitner of 899 Piketown Road, West Hanover Township, committed two acts of perjury and two acts of false swearing while a witness under oath in a nonjury proceeding before the Honorable Clarence C. Morrison on July 13, 1988. On November 29, 1990, District Attorney Lewis disapproved the private criminal complaint and stated that the portion of Mr. Kitner's testimony in controversy, even if knowingly false, was not material to the outcome of the proceedings. Mr. Cheppa then filed the complaint with the Dauphin County Court of Common Pleas pursuant to Rule of Criminal Procedure 133(b)(2). An answer was filed on behalf of the District Attorney's Office and we directed the Commonwealth to file a memorandum in support of its position. This matter is now before the Court for disposition. Our scope of review is limited to making an independent

APPENDIX E

determination as to whether the District Attorney abused his discretion in refusing to approve the private criminal complaint. See Commonwealth v. Eisemann, 308 Pa. Super. 16, 453 A2d 1045 (1982); Commonwealth v. Fisher, 28 D&C 3d 428 (1984). Unlike the District Attorney, the court in its review of the Commonwealth's decision is not required to give reasons for either approval or disapproval and there is no requirement that a hearing be granted. Commonwealth v. Braun, 19 D&C 3d 572 (1980). Nevertheless, we will discuss Mr. Cheppa's concerns and outline the basis for our decision.

In Count I of the proposed criminal complaint, the affiant claims that Stanley Kitner committed perjury by stating as a witness in a civil proceeding before Judge Morrison that it was raining on August 5, 1983 at and before the time he was present on John Cheppa's property at 7176 Catherine Drive, West Hanover Township. In Count II, it is alleged that Kitner committed perjury in the same proceeding by stating that he went to the property of John Cheppa on August 5, 1983 for the purpose of unblocking waters from Catherine Drive, Counts III and IV allege the same statements in support of the false swearing claims.

The civil action docketed to 3171 S 1987 was a suit by John Cheppa against West Hanover Township for damages resulting from the township's use of dirt which allegedly belonged to Mr. Cheppa. Mr. Cheppa was successful in this action and was awarded $2,540.61 as compensation for the dirt. The issue in the proceeding before Judge Morrison was the ownership of the dirt. Mr. Kitner, a representative of the township, stated that

he responded to a complaint, that because of a heavy rain, water had collected on Catherine Drive. He indicated that upon investigation, he found that dirt had been deposited on the right-of-way and that the water could not drain properly because of the dirt. The township removed the dirt from the right-of-way and deposited it on Mr. Cheppa's property. The township's subsequent use of this dirt resulted in the civil lawsuit. Mr. Cheppa agreed that there was dirt on the right-of-way but testified that the dirt was removed and deposited on his property pursuant to an agreement.

Perjury is defined as follows:

"A person is guilty of perjury, a felony of the third degree, if in any official proceeding he-makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true.

Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defence that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law." 18 Pa. CS. ss4902(a)(b).

False swearing is defined as follows:

"(a) False swearing in official matters. - A person who makes

a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true is guilty of a misdemeanor of the second degree if:

(1) the falsification occurs in an official proceeding; or

(2) the falsification is intended to mislead a public servant in performing his official function." 18 Pa. C.S. ss4903(a).

The issue in the proceeding before Judge Morrison was the ownership of the dirt which the township had removed (sic) from the right-of-way, deposited on Mr. Cheppa's land and subsequently used for the township's purposes. The weather conditions on August 5, 1983 and the reason for the township's removal of the dirt from the right-of-way on that date and the subsequent deposit on Mr. Cheppa's property had absolutely no bearing or could have had no bearing on Judge Morrison's decision. Furthermore, the affiant has not alleged that Mr. Kitner knew that his statements at issue in this complaint were untrue. The affiant has not attached any verification of the weather conditions on August 5, 1983 in support of his position that the witness made an untrue statement under oath that it was raining on that day. In fact, the Commonwealth has attached to its memorandum a copy of the climatological data for the Capital City Airport for August 5, 1983 which shows that the Harrisburg area received rain on that date.

APPENDIX E

Since ownership of the dirt was at issue in the proceedings before Judge Morrison, it was irrelevant as to why the dirt was removed from the right-of-way and placed on Mr. Cheppa's property. Mr. Cheppa has had his day in court to litigate this ownership issue and we will not countenance a further meritless criminal proceeding to air Mr. Cheppa's obvious reluctance to put the matter behind him. We find that the Commonwealth did not abuse its discretion by disapproving the private criminal complaint and accordingly, we enter the following

ORDER

AND NOW, this 23 day of April, 1991, affiant's petition for approval of private criminal complaint is dismissed.

BY THE COURT

Herbert A. Schaffner, Judge

APPENDIX F

RICHARD A. LEWIS
District Attorney
Dauphin County
Harrisburg, Pennsylvania 17108

May 23, 1991

Mr. John Cheppa
7176 Catherine Drive
Harrisburg, Pa. 17112-3618

Dear John:

This will acknowledge receipt of a private Criminal Complaint submitted by you outlining allegations against Stanley Kitner on charges of perjury and false swearing.

I have reviewed your correspondence dated May 20, 1991, which accompanied the Criminal Complaint. Additionally, I have reviewed prior correspondence that I forwarded to you on this particular matter.

I feel that your latest Criminal Complaint is an obvious attempt to circumvent the order of Judge Herbert Schaffner affirming my earlier decision disapproving a previous Criminal Complaint which you filed in the same matter.

Once again, I must state that I do not feel the statements of Mr. Kitner, whether true or false, are material to the outcome of this particular matter.

Accordingly, I am disapproving this latest private Criminal Complaint.

Thank you.

Richard A. Lewis
District Attorney

APPENDIX G

SECOND COMPLAINT TO DISTRICT ATTORNEY

CRIMINAL COMPLAINT (PRIVATE)

C 36262

District Attorney's Office B
(_____) Approved
(_____) Disapproved because

_____
(Issue Dated) (Signature)

COMMONWEALTH OF PENNSYLVANIA
VS .

Defendant: Stanley Kitner
899 Piketown Road
West Hanover Township
Dauphin County, Penna.

John Cheppa
(Name of Affiant)
of Private Individual
residing at 7176 Catherine Dr., Hbg. Pa

do hereby state under oath or affirmation, to the best of my knowledge, information and belief:

1) I accuse the above named defendant, who lives at the address set forth above, with violating the penal laws of the Commonwealth of Pennsylvania at the Office of District Justice Magaro and the Dauphin County Court House In Dauphin County on or about 8/26/86, 7/21/87, 3/28/88 and 7/13/88.

2) The acts committed by the accused were:

APPENDIX G

The defendant has made inconsistent statements under oath, both having been made within the period of the statute of limitations, both having been material to the outcome of a civil suit, one was false and not believed to be true by the defendant. On August 26, 1986 the defendant stated that $2500.00 worth of soil belonged to the Affiant and that he had a copy of the contract in question. On July 21, 1987 and March 28, 1988 the defendant stated that the afore mentioned soil belonged to West Hanover Township, and on July 13, 1988 the defendant stated that he did not have the contract in question.

PERJURY: two counts,

FALSE SWEARING: three counts

Please see Appendum.

PERJURY

Count I through IV have previously passed this way, we will begin with count V.

COUNT V: PERJURY

That, on or about July 21, 1987, while under oath before district Justice Samuel Magaro, Mr. Stanley Kitner knowingly lied in the case of John Cheppa v. West Hanover Township, case number TA 87-427. Mr. Kitner (while carrying out the directives of a contract) told the court that the dirt he used to backfill over a storm drain was township soil when he knew that soil was the private property of Mr. Cheppa and he did not believe his testimony to be true.

APPENDIX G

COUNT VI: PERJURY

That, on or about March 28, 1988, while under oath at an Arbitrator's Hearing, Mr. Stanley Kitner knowingly lied in the case of John Cheppa v. West Hanover Township, case number 3171 5 1987, Mr. Kitner (while carrying out the directives of a contract) told the court that the dirt he used to backfill over a storm drain was township soil when he knew that soil was the private property of Mr. Cheppa and he did not believe his testimony to be true.

COUNT VII: FALSE SWEARING

That, on or about July 21, 1987, while un-der oath before district Justice Samuel Magaro, Mr. Stanley Kitner knowingly lied in the case of John Cheppa v. West Hanover Township, case number TA 87-427. Mr. Kitner (while carrying out the directives of a contract) told the court that the dirt he used to backfill over a storm drain was township soil when he knew that soil was the private property of Mr. Cheppa and he did not believe his testimony to be true.

COUNT VII: FALSE SWEARING

That, on or about March 28, 1988, while under oath at an Arbitrators Hearing, Mr. Stanley Kitner knowingly lied in the case of John Cheppa v. West Hanover Township, case number 3171 5 1987, Mr. Kitner (while carrying out the directives of a contract) told the court that the dirt he used to backfill over a storm drain was township soil when he knew that soil was the private property of Mr. Cheppa and he did not believe his testimony to be true.

COUNT VII: FALSE SWEARING

That, on or about July 13, 1988, while under oath before Judge Clarence C. Morrison of the Dauphin County Court, Mr.

APPENDIX G

Stanley Kitner knowingly lied in the case of John Cheppa v. West Hanover Township, case number 3171 5 1987. Mr. Kitner (while carrying out the directives of a contract) told the court that he did not have the contract which would have told him what dirt to use in backfilling over a newly installed storm drain and he did not believe his testimony to be true.

All of which were against the peace and dignity of the commonwealth of Pennsylvania and contrary to the Act of assembly, or in violation of 18 ss 4902, 4903 of the Act OF Pa. Crimes Code 1972.

I ask that a summons be issued and that the accused be required to answer the charges I have made. I swear to or affirm the within complaint upon my knowledge, information and belief, and sign it on May 20, 1991, before NOTARY PUBLIC.

John Cheppa
Signature of Affiant

Personally appeared before me on May 20, 1991, the affiant above named who. being duly sworn (affirmed) according to law, signed the complaint in my presence and deposed and said that the facts set forth therein are true and correct to the best of affiant' knowledge, information and belief.

Patricia Lamb Keammerer
Issuing Authority

APPENDIX H

CRIMINAL COMPLAINT (PRIVATE)

C 36263

District Attorney's Office B
(_____) Approved
(__X__) Disapproved because: Portions of defendant's testimony that is in controversy, even if knowingly false, was not material to outcome of proceedings.

11/29/90 R. A. Lewis
(Issue Dated) (Signature)

COMMONWEALTH OF PENNSYLVANIA
VS.

Defendant: Stanley Kitner 899
Piketown Road
West-Hanover Township
Dauphin County, Penna.

John Cheppa
(Name of Affiant)
of Private Individual
residing at 7176 Catherine Dr., Hbg. Pa
do hereby state under oath or affirmation, to the best of my knowledge, information and belief:

1) I accuse the above named defendant, who lives at the address set forth above, with violating the penal laws of the Commonwealth of Pennsylvania at the Dauphin County Courthouse, Harrisburg, Pennsylvania In Dauphin County on or about 7-13-88

2) The acts committed by the accused were:

# APPENDIX H

Count I

Perjury: Did intentionally and knowingly, in an official proceeding, make a false statement, to wit: That it was raining on August 5, 1983 at and before he was present on John Cheppa's property at 7176 Catherine Drive, West Hanover Township, Dauphin County, Pennsylvania, while under oath or equivalent affirmation, when the statement was material and he did not believe i t to be true.

Count II

Perjury: Did intentionally and knowingly, in an official proceeding, to wit: a hearing or trial before the Honorable Clarence C, Morrison, make a false statement, to wit: That he went to the property of John Cheppa at 7176 Catherine Drive, West Hanover Township, Dauphin County, Pennsylvania on August 5, 1983 for the purpose of unblocking waters from Catherine Drive at or near the said property of John Cheppa while under oath or equivalent affirmation, when the statement was material and he did not believe it to be true.

Count III

False swearing: Did intentionally and knowingly, make a false statement, to wit: That it was raining on August 5, 1983 at and before he was present on John Cheppa's property at 7176 Catherine Drive, West Hanover Township, Dauphin County, Pennsylvania, while under oath or equivalent affirmation, when he did not believe the statement to be true in that the falsification occurred in an official proceeding, to wit: a hearing before the Honorable Clarence C. Morrison, Judge of the Dauphin County Court of Common Pleas.

APPENDIX H

Count IV

False swearing: Did intentionally and knowingly, make a false statement, to wit: That he went to the property of John Cheppa at 7176 Catherine Drive, West Hanover Township, Dauphin County, Pennsylvania on August 5, 1983 for the purpose of unblocking waters from Catherine Drive at or near the said property of John Cheppa while under oath or equivalent affirmation, when the statement was material and he did not believe it to be true.

All of which were against the peace and dignity of the commonwealth of Pennsylvania and contrary to the Act of assembly, or in violation of 18 55 4902, 4903 of the Act of Pa. Crimes Code 1972.

I ask that a summons be issued and that the accused be required to answer the charges I have made. I swear to or affirm the within complaint upon my knowledge, information and belief, and sign it on November 20, 1991, John Cheppa.

SPECIAL AFFIDAVIT WAS MADE AND SIGNED ON THE ABOVE MENTIONED DATE.

## APPENDIX J

## STATE COURTS; APPEAL; CERTIORARI

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity. (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.

## APPENDIX K

## UNITED STATES CONSTITUTION

### AMENDMENT V

No person shall be held to answer for a capital, of otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia when in actual service in time of War or public danger; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

# APPENDIX L

## UNITED STATES CONSTITUTION

## AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the bases of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under

any State, who, having, previously taken an oath, as a member of Congress, or as an officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

# APPENDIX M

## PENNSYLVANIA RULES OF CRIMINAL PROCEDURE

### RULE 133. APPROVAL OF PRIVATE COMPLAINTS

a) When the affiant is not a law enforcement officer and the offense(s) charged include(s) a misdemeanor or felony which does not involve a clear and present danger to any person or to the community, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove without unreasonable delay.

(b) If the attorney for the Commonwealth

(1) Approves the complaint, the attorney shall indicate this decision on the complaint form and transmit it to the issuing authority;

(2) Disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter the affiant may file the complaint with a judge of a Court of Common Pleas for approval or disapproval;

(3) Does not approve or disapprove within a reasonable period of time, the affiant may file the complaint on a separate form with the issuing authority, noting thereon that a complaint is pending before an attorney for the Commonwealth. The issuing authority shall determine whether a reasonable period has elapsed, and, when appropriate, shall defer action to allow the attorney for the Commonwealth an additional period of time to respond.

# APPENDIX N

## PENNSYLVANIA RULES OF CRIMINAL PROCEDURE

### RULE 134. ISSUANCE OF PROCESS PURSUANT TO COMPLAINT

(a) In any proceeding initiated by complaint, the issuing authority shall ascertain and certify on the complaint that:

(1) The complaint has been properly completed and executed;

(2) There is probable cause for the issuance of process, in the form of an affidavit; and

(3) When prior submission to an attorney for the Commonwealth is required, that an attorney has approved the complaint.

(b) Upon ascertaining the above matters, the issuing authority shall:

(1) Accept the complaint for filing; and

(2) Issue a summons or warrant of arrest as the case may be.

# APPENDIX P

## 18 Pa. C.S.A. ss 4902 FALSIFICATION AND INTIMIDATION

### Perjury

(a) Offense defined. - A person is guilty of perjury, a felony of the third degree, if in any official proceeding he makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of a statement previously made, when the statement is material and he does not believe it to be true.

(b) Materiality. - Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defence that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(c) Irregularities no defense. - It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the actor presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(d) Retraction. - No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the

falsification substantially affected the proceeding.

(e) Inconsistent statements. - Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(f) Corroboration. - In any prosecution under this section, except under subsection (e) of this section, falsity of a statement may not be established by the uncorroborated testimony of a single witness.

1972, Dec. 6, P.L. 1482, No. 334, ss 1, effective June 6, 1973.

18 Pa. ss 4903

(a) False swearing in official matters. - A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true is guilty of a misdemeanor of the second degree if:

(1) the falsification occurs in an official proceeding: or

(2) the falsification is intended to mislead a public servant in performing his official function.

APPENDIX P

(b) Other false swearing. - A person who makes a false statement under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, when he does not believe the statement to be true, is guilty of a misdemeanor of the third degree, if the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(c) Perjury provisions applicable.

Section 4902(c) through (f) of this title (relating to perjury) applies to this section.

1972, Dec. 6, P.L. 1482, No. 334, ss 1, effective June 6, 1973.

## APPENDIX Q

PARAGRAPHS 8 AND 9 OF APPELLANTS FIRST COMPLAINT TO THE TRIAL COURT WHERE THE U.S. CONSTITUTION WAS RAISED.

8. Rule No. 133 of the Pennsylvania Rules of Criminal Procedure as applied to this instant case is contrary to the United States and State of Pennsylvania Constitutions in that it is arbitrary and capricious by placing in the hands of one person complete control, with no standards, tests, elements or criteria to be followed, whether or not a criminal act can be prosecuted by a private individual.

9. The District Attorney's refusal to approve the Private Criminal Complaint in question is contrary to the Constitutions of the United States and Pennsylvania in that it is arbitrary and capricious and does not provide equal protection of the laws and is discriminatory as to Affiant.

APPENDIX R

IN THE COURT OF COMMON PLEAS
DAUPHIN COUNTY, PENNSYLVANIA

NO. 12 M. D.

COMMONWEALTH OF PENNSYLVANIA

v.

STANLEY KITNER

AND NOW, comes Richard A. Lewis, District Attorney of Dauphin County, by Deborah E. Curcillo, Senior Deputy District Attorney, who, in answer to Affiant's Petition, responds as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Denied. The district attorney's Office did not abuse its discretion in failing to approve the private complaint. Mr. Cheppa has been pursuing this claim since 1985 (sic) there is no basis to his claim, and the information that he has provided to the District Attorneys's Office does not establish, beyond a reasonable doubt, criminal charges against Mr. Kitner.
7. The Commonwealth has copied a letter from the District Attorney to Mr. Cheppa explaining the reasoning behind disproving the private criminal complaint.
8. Rule 133 of the Pennsylvania Rules of Criminal Procedure Apply to the discretion by the District Attorney's Office in approving or disapproving private criminal complaints. The

prosecutor is under no compulsion to prosecute every alleged offender, and decision to prosecute or not is a matter within his discretion, subject to review by Court of Common Pleas, Commonwealth v. Malloy, 304 Pa. Super. 297, 450 A.2d. 689 (1982). Mr. Cheppa has submitted a private criminal complaint to the District Attorney's office for approval, the District Attorney properly refused to prosecute, the District Attorney acted properly in disapproving the private criminal complaint based on the finding that the complainant would not be able to sustain the conviction on the charges proposed. The District Attorney has reviewed the material provided to this office by Mr. Cheppa. The falsification that Mr. Cheppa is claiming by Mr. Kitner, a township employee, does not affect the material outcome or the course of the proceedings.

9. Denied, the District Attorney's Office has discretion to approve or disapprove private criminal complaints. The District Attorney has acted completely within his authority and in accordance with the law and did not abuse his discretion in refusing to prosecute the private criminal complaint filed by Mr. Cheppa.

WHEREFORE, the Commonwealth respectfully requests this Honorable Court to disapprove the private criminal complaint against Mr. Stanley Kitner.

Richard A. Lewis District Attorney

Deborah E. Curcillo Senior Deputy D.A.

## APPENDIX R

LETTER OF ITEM 7 IN D.A.'S ANSWER:

October 17, 1990

Dear Mr. Cheppa:

Kindly excuse my delay in writing to you regarding your complaint against Mr. Kitner.

This Office has completed its review of the various investigative materials and documents you provided. Unfortunately, we do not agree with your allegation that Mr. Kitner committed perjury.

A person commits perjury if, in an official proceeding, he makes a false statement under oath when the statement is material and he does not believe it to be true. Under Pennsylvania law, the falsification is material if it could affect the course or outcome of the proceedings.

It is our position that Mr. Kitner's explanation, even if knowingly false, was not material to the outcome of the proceedings.

I have made arrangements with our County detectives to deliver your papers and other material to you within the next several days.

Thank you.

Richard A. Lewis
District Attorney

## APPENDIX S

## DISTRICT ATTORNEY STATES THAT MEMORANDUM FILED WITH THE TRIAL COURT WAS NOT EX PARTE BECAUSE CHEPPA SHOULD HAVE OBTAINED A COPY OF THAT MEMORANDUM FROM THE CLERK OF COURTS.

Cheppa argues that the trial court errored by accepting ex parte communications from the district attorney. This argument is completely meritless, because the Appellant had actual notice that a memorandum was going to be filed, and the memorandum was filed and docketed with the court. Cheppa even acknowledges that in the Order dated the 26th day of February. 1991, Judge Schaffner required the District Attorney's Office to file a memorandum to provide the court with sufficient data to be able to review the matter. Appellant's (brief at 27) pursuant to the order, the Commonwealth did file a memorandum in the case at No. 12 M.D. 1991. The memorandum was filed on March 15, 1991, as is evidenced by the Clerk of Courts docket entry sheet. (see R.R. at 2a) Contrary to the assertion that an ex parte communication occurred, Cheppa had actual notice that a memorandum would be filed by the Commonwealth. Why Cheppa failed to ascertain whether a memorandum had, in fact, been filed is beyond the scope of the Commonwealth's argument. Regardless of Cheppa's failure, the trial court accepted no ex parte communications from the district attorney. Therefore, this issue is meritless and the order of the trial court should be affirmed.

APPENDIX T1

WITNESS TO KITNER-CHEPPA AGREEMENT JOHN ROBINSON JR. - ATTORNEY

May 9, 1991

To whom it may concern:

On August 5, 1983, the West Hanover Township Road Crew came to the Cheppa property at 7176 Catherine Drive to remove the soil from the Cheppa property. At that time the Township authorities in charge - Robert Landon, supervisor and Stanley Kitner, foreman - agreed that they would not enter the Cheppa property and also agreed that the soil placed by Cheppa on the township's right-of-way belonged to Mr. Cheppa and that the Road Crew would remove that fill from the right-of-way and place it upon the Cheppa property.

John J. Robinson, Jr.

## APPENDIX T2

MR. KITNER TESTIFIES THAT HE USED THE SOIL OFF OF THE CHEPPA PROPERTY TO BACKFILL OVER THE NEWLY INSTALLED STORM DRAIN PIPE, AUGUST 26, 1986, PP. 103 - 104:

Mr. Kitner also testified that the soil which he had previously removed from the right of way belonged to Mr. Cheppa:

Q. Now, you testified, I think, correct me if I am wrong, that there was soil that was on Mr. Cheppa's property that you did push over into the ditch, correct?

A. That's correct. It was out on the driveway in the beginning.

Q. Correct. And some of that soil was soil that had been on the right-of-way in 1983, correct?

A. What was your question?

Q. Some portion of that soil that you pushed into the ditch had been on the right-of-way in 1983, in August, correct?

A. That's exactly right. He didn't have permission to put it there.

Q. But that was soil that he had placed there? It was his soil?

A. And he put it in my right-of-way.

Q. So, you took his soil and then pushed it back up into his property?

A. To get the water off the road.

APPENDIX T2

Q. Fine. And that then is Mr. Cheppa's soil that was on the property that you pushed into the ditch?

A. Exactly right, sir, so we could back up over there to get more fill in.

[ N.T. p. 103, Ls. 11-25; p. 104, Ls. 1 -1 1 . ]

## APPENDIX T3

MR. KITNER TESTIFIES THAT HE DID HAVE THE CHEPPA CONTRACT, THAT HE STUDIED THAT CONTRACT AND VOTED ON IT AS TOWNSHIP SUPERVISOR. AUGUST 26, 1986, p. 105 & 115:

Q. Mr. Kitner, I am going to show you a copy of the agreement that was made between — it says between the Board of Supervisors of West Hanover Township and John Cheppa, right? See where I am reading?

A. Go ahead.

Q. And you are one of those supervisors, aren't you?

A. Now, yes.

Q. And you do remember reviewing this, don't you?

A. Yes.

Q. And I assume that the Board took a vote on that, correct?

A. I would say.

Q. And you voted in favor of it?

A. Yes.

Q. And you knew, didn't you, that you would be the one that would actually be doing the work, didn't you?

A. That's right.

Q. And I assume, am I correct, sir, that you carefully reviewed the plan of proposed drainage facilities as part of

the plan?

A. I might tell you — I have that copy.

Q. You have the original?

A. Yes, indeed.

Q. And you studied it carefully?

A. Yes, indeed.

[1986 case; N.T. P. 105, Ls. 17-25, P. 106, Ls, 1-19]

Q. I want to show you again the agreement that was signed in March of 1985. Now, I am directing your attention to Paragraph S and the portion that appears on Page 3. Again, you have told me that you reviewed this carefully before you signed it, right?

A. Right.

[N.T. p. 115, Ls 10-15.]

APPENDIX T4

MR. KITNER TESTIFIES THAT HE DID NOT HAVE A COPY OF THE CHEPPA CONTRACT AND DID NOT KNOW WHERE TO GET THE DIRT TO FILL OVER A PIPE FROM. JULY 13, 1988, PP. 62 - 64:

Q. Now, who in the township, Mr. Kitner, informed you what your obligations were as to filling the ditch that was going to be constructed and drainage pipe installed, who in the township told you what to do?

A. The supervisors at the time.

Q. Did they give you a copy of the contract so that you would know what you were supposed to do? Did they give you a copy of the contract?

A. No.

Q. How did you know where you were to get the fill?

A. They told me.

[1988 case; N.T. P. 62, Ls. 15-25]

Q. But Mr. Kitner, the question is where were you to get the fill to fill the ditch?

A. After we put the pipe in and pushed this fill over there, we were to get the fill from road work we had, we were doing the rest of the season off the stock pile.

Q. You were supposed to do what paragraph 5 said, isn't that correct?

A. We did.

Q. Did you know that is what you were supposed to do?

A. We did haul fill.

Q. Did you know that was what you were supposed to do?

A. I didn't have that agreement.

Q. You didn't know where you were supposed to get the fill, isn't that true?

A. But we had to —

Q. Isn't it true?

A. Yes, but we still had to move that fill.

Q. Isn't it true you didn't know what the contract said were you were to get the fill?

A. I didn't have no contract.

Q. You didn't have the contract. ...

[1988 case; N.T. P. 63, Ls. 18-25; P. 64, Ls. 1-13]

APPENDIX T5

MAY 7, 1991

To whom it may concern:

I, Metro Lynn, do hereby state that I witnessed the hearing before District Justice Samuel Magaro on July 21, 1987, in the case of John Cheppa Vs. West Hanover Township, Ta 87-427 and it is further stated that at that hearing, Mr. Stanley Kitner testified that the dirt from the right-of-way in front of the Cheppa property used to cover the pipe beneath the Cheppa property belonged to West Hanover Township.

Metro Lynn

APPENDIX T6

MAY 3, 1991

To whom it may concern:

I, Lynn Uria, do hereby state that I witnessed the hearing before the Board of Arbitrators on March 28, 1988, in the case of John Cheppa vs. West Hanover Township and it is further stated that at that hearing Mr. Stanley Kitner stated that the dirt from the right-of-way in front of the Cheppa property which was used to cover over a pipe beneath the Cheppa property belonged to West Hanover Township.

Lynn Uria

APPENDIX T7

MR. KITNER TESTIFIES THAT HE CAME TO THE CHEPPA PROPERTY BECAUSE OF HIS DUTY UNDER THE LAW AND HEAVY RAIN AND FLOODING AND THAT HE AND CHEPPA HAD AN AGREEMENT ABOUT THE SOIL FROM THE RIGHT-OF-WAY, JULY 13, 1888.

**PERJURED TESTIMONY:**

From the Transcript of Case No. 3171 5, 1987 Heard by Clarence C. Morrison, Judge, July 13, 1988, under direct examination.

**PAGE 43**

Q What is your elected capacity?

A Township supervisor.

Q Have you otherwise held any employment with West Hanover Township prior to being elected supervisor?

A Yes, I have.

Q What is that?

A I have been employed with the township for 30 plus years and I have been road foreman for 24 years.

Q As road superintendent what are your general duties?

A Make sure that the roads are in the best of shape as far as building and materials that we have.

Q Over the course of your 24 years of experience have you become aware of what your responsibilities are under the terms of the Second Class Township Code?

A Yes.

Q With regard particularly to roads. What is your responsibility.

A To roads we are to have the ditches open the best we can and all pipes and drainages open.

Q With regard to the roads, just roads first of all, what is your responsibility?

A Keep the roads clear.

**PAGE 44**

Q And to do what else, maintain them?

A Maintain them.

Q Do you know if that provision is found in the Second Class Township Code?

A Yes, it is.

Q Mr. Kitner, I show you a copy of a page from the Second Class Township Code. You just indicated that your responsibility as you understand it to be was to repair and maintain the roads. Is that correct?

A Correct.

Q Without necessarily reading it, read it to yourself. Does that section of the code that you are looking at right now set forth that responsibility?

A Yes.

Q And at the bottom of that section there is a reference to a section number. Would you identify that for the Court?

A 1110.

Q That is found in volume 53 of Purdon's Statutes, section number what?

A 66110.

**PAGE 46**

Mr. Cleckner: Your Honor, that wouldn't change whether or not they supplied the fill which is the issue before this Court.

Mr. Wass: I submit it does change it.

THE COURT: All right. We are going to allow some limited exploration of that matter. Of course we have some understanding of what those responsibilities are, but to the extent you think it is necessary to put that on the record, Mr. Wass, we are going to allow it.

Q Mr. Kitner, with regard to keeping open ditches, have I just shared with you a copy of the provision of the Second Class Township Code with which you are familiar?

A Yes.

Q Does that section set forth your re-sponsibility regarding ditches?

**PAGE 47**

A Yes.

Q What is the Purdon's Statute reference, 53 Purdon's Statute, what section number?

A 66152.

APPENDIX T7

Q Now, let me direct your attention, Mr. Kitner, to the date of August 5, 1983. Would you indicate to the Court whether or not you received a complaint funneled to you through the township administration office?

A At that date we had heavy rain and we got a call at the garage from the municipal building that the water was being blocked up on Catherine Drive.

Q When you got that complaint, what did you do?

A I answered the complaint.

Q Specifically, did you go out to the location?

A I went to the location, found water was being blocked up, found a lot of dirt dumped on our right-of-way, some of the black top, our cart way.

Q Loads of fill?

A Loads of fill.

Q Did you know who the owner of the property was where most of the fill was located?

A Yes, I did.

Q That was Mr. Cheppa?

A Mr. Cheppa.

**PAGE 50**

Q Getting back to August 5, 1983. When you observed the quantity of fill on the roadway and some in the ditch, what did you determine to do?

APPENDIX T7

A I radioed, dispatched a township crew from our garage and they brought 2 trucks and a front end loader there.

Q Why?

A We were going to get rid of the water off the highway.

Q What was happening with the water?

A Blocked up the gutter which would have blocked up the pipe and into peoples's basements.

Q With regard to this ditch, what [that] was the drainage swale you have now called a ditch?

A Correct. He created the problem. He filled it shut.

**PAGE 51**

Q But that passageway had debris in the bottom of it, that is what you are saying?

A Right.

Q Right in the location of where the swale was and should have been?

A Absolutely.

Q That was causing the back up of water?

A Absolutely.

Q Onto the roadway?

A Yes.

Q So you decided to remove the soil? A Correct.

Q What were the weather conditions that day?

A Raining, heavy rain.

Q When you first went to that project, how many pieces of equipment did you take with you?

A I went by myself. Then I dispatched a front end loader and 2 trucks.

Q Dump trucks?

A Two dump trucks.

Q What was your purpose in calling the dump trucks and front end loader?

A Our purpose was, we were going to haul that dirt away.

**PAGE 52**

Q Why were you going to haul it away?

A To let the water down the ditch where it belongs.

**PAGE 53**

Q That was your initial effort?

A Correct.

Q Your initial option. Did you have another option avail-

able to you?

A My other option was, it was pouring down rain and Mr. Cheppa came out there with his tractor and every time we wanted to work he moved his tractor in front of us. In the meantime (I wasn't supervisor at that time) one of the supervisors and state police came, and said we had to get rid of it.

Q It was raining?

A It was raining.

Q You didn't move it to its stockpile, what did you do with it?

A We pushed it up over the edge of the bank.

Q Right onto that triangular piece at the end of Mr. Cheppa's property?

A Correct.

Q Why did you do that?

A It was pouring down rain and to the best efforts of the township and road and state police when you had put it there that we wouldn't have everything else all messed up with mud, rock and dirt.

**PAGE 54**

Q It was raining. You wanted to get the job done quickly?

A Correct.

Q You didn't want to mess up the other township roads with mud, is that what your point was?

A That is what I am saying.

Q Instead of stockpiling it at the township location, you pushed it right on Mr. Cheppa's property?

A Right.

**PAGE 57**

Q Again, Mr. Kitner, going back to the date of August 5, 1983, when you were out there in the presence of Mr. Cheppa, did you hear him state on his direct examination that you insisted that he prepare and sign some sort of agreement.

A I heard him say that, but I don't recall of that. It as pouring down raining. We wanted to get the job done and get the water off the highway

Q Do you recall at all whether Mr. Cheppa signed and gave you any form of agreement?

A No. If it would be true, I would like to see it.

APPENDIX T8

**OPENING STATEMENTS IN SUPPORT OF PERJURUS TESTIMONY:**

**From the Transcript of Case No. 3171 5, 1987 Heard by Clarence C. Morrison, Judge - July 13, 1988**

**PAGE 6**

A lot of fill had been placed out on the Township's right-of-way of Catherine Drive and some of it, in fact, out to the paved cart way, and on a day when it was raining quite heavily complaints were received that the water was backing up. There was some danger neighboring basements might get flooded with water backup...

**PAGE 7**

The issue is, Your Honor, that the soil that the Township removed from a public right-of-way or from the ditch right-of-way, it had authority to do under the Second Class Township Code. It could have hauled it away and stock piled it. The Township left it there and stock piled it and then later on when the responsibility of filling the ditch in arose in part, the ditch was filled from that stock pile fill that had originally been removed from the township property. We do claim credit for it, Your Honor.

**CLOSING STATEMENTS IN SUPPORT OF PERJURUS TESTIMONY:**

**From the Transcript of Case No. 3171.5, 1987 Heard by Clarence C. Morrison, Judge - July 13, 1988**

**PAGE 10**

Because of the rain and the conditions that existed on that day the necessity to move quickly) that fill, instead, was

stockpiled on the property of Mr. Cheppa, and was utilized later.

We referenced in our testimony provisions of the Township, Second Class Township Code, which imposed these responsibilities on the Township. In fact, the one section we referred to with regard to keeping clear ditches speaks of a property owner who does cause a ditch to be blocked or filled up, can be guilty of a criminal offense, and we submit that is exactly what occurred on August 5, 1983, when Mr. Kitner and his road crew went out and moved that fill. Having found fill on Township property, it become Township fill. It was not any longer Mr. Cheppa's fill. He had brought that fill to that location. It is true. But having deposited it on a Township roadway, it is no longer his fill and it is the Township's to do with what it wishes, and as I say, it could have been stock piled it on its own property or as it did, it could have stock piled it on Mr. Cheppa's property.

by: Mr. Carl Wass, Esquire
3631 North Front Street
Harrisburg, Penna.
Attorney for Mr. Kitner

APPENDIX T9

WITNESS JOHN ROBINSON'S STATEMENT OF NO RAIN ON AUGUST 5, 1983 AT THE CHEPPA PROPERTY:

January 3, 1990

To whom it may concern:

I was at the Cheppa property on August 5th, 1983, arriving there in the early afternoon. There was no evidence of rain when I arrived, there was no rain while I was there and there was no rain while the township road crew cleaned the right-of-way in front of Mr. Cheppa's property.

John J. Robinson Jr.

APPENDIX T10

WITNESS JESSIE LINKERT, STATEMENT OF NO RAIN AT THE CHEPPA PROPERTY ON AUGUST 5, 1983:

Cheppa:

Good morning Jessie, do you mind giving me about ten minutes of your time? I would like to talk to you about the events that led up to the road crew coming out to my property on August 5th, 1983.

Linker:

What's this for?

p . 1 .

Cheppa:

For my records, I thought I would give you a chance to tell your version.

Linker:

I don't know how much I can remember; you'll have to jog my memory, but, yah, that'll be OK.

p.2

Q. Did the road crew come to remove the fill from my property?

A. Yah.

Q. I have several photographs here. This one, number one, can you identify the people there/ Left to right.

A. That's Quenton Hetrick, Stan Kitner, that's me, I don't know who that is.

p.3.

Q. What were the weather conditions that day? Was it raining? Or was it dry?

A. It was clear that day; it was dry.

APPENDIX T10

p.4.

Q. What time did the road crew arrive?

A. It was afternoon, early afternoon.

Q. That may be when they left, but when did they get there?

A. It was afternoon; they were only there for about an hour.

Q. Remember? We had to wait for the State Police and then my Lawyer and all. I have recorded that they arrived at 11:40 A.M. Is that when they came?

A. Yah, Yah, that's right.

p.6.

Q. Now the question. As you can see, the township removed the fill from the right-of-way where the street is going uphill. Would removing that fill have any effect on the water entering the culvert down below? In other words. Did the fact that the fill was removed from the right-of-way prevent any flooding?

A. No. That would have no effect on it. But if the street ever flooded or not, I don't know. I would have to be there when it flooded to see it, I was never there when it rained. If I was to go out there on a rainy day I could tell you if the flooding was caused by fill on your property but I would have to be a licensed engineer, I'm not a licensed engineer.

## APPENDIX T11

OFFICIAL WEATHER OBSERVATIONS FROM THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, EXTRACTED FROM THE CLIMATIC DATA SHEET FOR AUGUST 5, 1983:

LISTED TIMES ARE IN EASTERN STANDARD TIME. TRUE TIME IS ONE OUR LATER, BECAUSE ON AUGUST 5TH. THE AREA WAS ON EASTERN DAYLIGHT SAVINGS TIME.

4:45 P.M. Thunder began.

5:00 P.M. Rain measurement: trace (unmeasurable).

5:51 P.M. Thunder overhead, moving east. Lighting cloud to cloud, Precipitation, very light.

6:00 P.M. Rain measurement: .11 inches.

6:10 P.M. Thunder ended.

6:15 P.M. Rain ended.

7:00 P.M. Rain measurement: .01 inches.

## APPENDIX T12

WITNESS PAUL CARL STATEMENT AS TO THE APPROXIMATE TIME THE TOWNSHIP ROAD CREW LEFT THE CHEPPA PROPERTY:

pp. i - 2. Q. I see. OK. What time did the road crew leave the Cheppa property?

Q. Do you have any ides?

A. I really— it was in the afternoon towards evening, I really don't know.

Q. OK. Did you work any overtime that day? Do you remember.

A. No.

Q. No?

A. No.

Q. So then, you must have went home at the regular time. Right?

A. Right.

Q. And your quitting time?

A. 3:30 [P.M.].

APPENDIX T13

MR. KITNER'S TRUTHFUL RECOLLECTION OF OTHER EVENTS GIVEN IN TESTIMONY ON JULY 13, 1988:

1. Employed by the township for more that thirty years.
2. The Cheppa property had been a drainage for the development long before Cheppa bought the property.
3. Received a phone call at the Township garage from the municipal building.
4. Went to the location and found a lot of dirt dumped on the township right-of-way.
5. Went to the location alone.
6. Knew that the owner was Cheppa.
7. Saw a lot of fill on the Cheppa property.
8. Dispatched a township road crew.
9. Dispatched two dump trucks and a front-end loader.
10. Went to the Cheppa property to "haul that dirt away".
11. Intent was to haul the dirt to the township stockpile.
12. State police was present.
13. Township supervisor was present.
14. Cheppa moved a tractor in front of the township road crew.

15. Pushed the dirt from the right-of-way onto the Cheppa property.

16. Cheppa ditch was curved which followed the old original drain.

17. Observed that when looking from one end of the ditch to the other you couldn't see the other end.

18. Pushed the fill up over the edge of the bank.

19. The fill that was moved from the right-of-way was brought there by Cheppa.

20. The fill that was moved from the right-of-way was placed on the Cheppa property where Cheppa said to place it.

21. Removed the fill from the right-of-way during the course of normal public duties.

22. Placed the fill right onto a triangular piece at the end of Mr. Cheppa's property.

APPENDIX T14

CRIMINAL PSYCHIATRIST STATES THAT KITNER SUFFERED NO MEMORY LOSS DURING HIS TESTIMONY ON AUGUST 13. 1988:

September 18, 1989

To whom it may concern:

This letter is written for Mr. John Cheppa who consulted me regarding an issue of great concern to him. Mr. Cheppa being aware that I am a broad certified specialist in psychiatry asked for a consultation to present his evidence and to determine if in my opinion the discrepancies in certain testimony could be explained via a simple memory loss.

Pursuant to this. I reviewed his records and it was clear that he has a good deal of documents, photographs, and weather reports involving the day in question. It would appear to me that any discrepancies in one's memory of that day for up to three hours could not be explained simply on a memory loss basis. This is because of the patchy and at the very least suspicious nature of the loss of memory for the key points in question.

I agreed to submit this letter to Mr. Cheppa who hopes that it will be helpful in obtaining a review by a representative of the Attorney General's Office since Mr. Cheppa is concerned that Mr. Lewis, Dauphin County District Attorney, has not gone over this with him in person.

Paul F. Phillips, M.D.

## APPENDIX U

US CONSTITUTION IN FIRST COMPLAINT, January 4, 1991.

8 Rule No. 133 of the Pa. Rules of Criminal Procedure as applied to this instant case is contrary to the U.S. and the State of Pa. Constitutions in that it is arbitrary and capricious by placing in the hands of one person complete control, with no standards, tests, elements or criteria to be followed, wether or not a criminal act can be prosecuted by a private individual.

9 The District Attorney's refusal to approve the Private Criminal Complaint in question is contrary to the Constitutions of the U.S. and Penna. in that it is arbitrary and capricious and does not provide equal protection of the laws and is dis-criminatory as to Affiant.

US CONSTITUTION IN EXCEPTIONS TO FIRST CASE OF PERJURY, MAY 3, 1991. P. 3.

9. Said Opinion and Order is contrary to the United States and State of Pennsylvania Constitutions in that it allows for the arbitrary and capricious application of criminal law by placing in the hands of one person complete control, with no standards, tests, elements or criteria to be followed, over whether or not a criminal act can be prosecuted by a private individual.

10. Said Opinion and Order is contrary to the Constitutions of the United States and Pennsylvania in that it is arbitrary and capricious and does not provide equal protection of the laws and is discriminatory as to the Affiant.

APPENDIX V

US CONSTITUTION RAISED IN AFFIANT'S BRIEF TO EXCEPTIONS OF FIRST CASE OF PERJURY. JUNE 7, 1991. pp. 24 - 28.

EXCEPTIONS 9 AND 10 The Court errored in denying John Cheppa equal protection of the laws.

Effective and fair enforcement of the penal statues in the State of Pennsylvania is of significant public concern. It is of significant concern for two reasons. First, to properly punish those who violate the statutes. Second, to deter future violations of the penal laws, and as such, protect innocent citizens.

When the penal statutes are not being effectively and fairly enforced the citizens of this Commonwealth generally, and victims specifically, suffer losses, tangible and intangible, liquidated and unliquidated. The Fifth Amendment to the United States Constitution provides, in part, that no citizen shall "..be deprived of life, liberty or property, without due process of law." It is common knowledge that the Fifth Amendment is made applicable to the States through the Fourteenth Amendment to the U.S. Constitution. It is also fundamental that the guarantee of due process is absolute. Hammond Packing Co. v. Arkansas, 212 U.S. 322, 29 5. Ct. 370.

John Cheppa, as a victim of the lies and falsehoods of Stanley Kitner, a West Hanover Township employee, suffered substantial losses. He lost attorney's fees, court costs, time off work, and other incidental expenses. He has also suffered emotional stress and fatigue.

## APPENDIX V

The Pennsylvania State Legislature has placed in the hands of the Dauphin County District Attorney not only the right, but also the duty, to enforce the perjury and false swearing statute against Stanley Kitner. As such, when a District Attorney and Court are obviously acting under color of State law, arbitrarily and unreasonably and capriciously refusing, without hearing or argument, to prosecute a prima facie criminal case, they are violating the U.S. Constitution's due process clause.

An enormous amount of evidence was presented to the District Attorney and the court which established a prima facie criminal case against Stanley Kitner. Neither the District Attorney nor the Court in its Opinion addressed the fact that to obtain a conviction under "false swearing" the false testimony need not be material. The failure to prosecute Mr. Kitner constitutes an abuse of power which can not be tolerated. Mountain Timber Co. v. Washington, 243 U.S. 219 37, Ct. 260.

The Fourteenth Amendment to the U.S, Constitution not only mandates that the States (i.e. the District Attorney) abide by the due process requirements, but it also forbids the District Attorney from denying any "person within his jurisdiction the equal protection of the law." The District Attorney has arbitrarily and capriciously denied John Cheppa, an innocent citizen-victim, protection under the penal laws of this Commonwealth. What greater evidence of a violation of the Equal Protection clause could be presented?

John Cheppa is a property owner, a tax-payer, a voter, an adult, a college graduate, a teacher. Why should he not be

protected, as all other citizens, against criminal activity in Dauphin County? The indiscriminate enforcement of the criminal statutes is as much a violation of the Equal Protection Clause to the victim as to the Defendant. He's a victim of a criminal act. He needs "protection from the law." The District Attorney must provide that protection "equally." It is the State, through its office holders, which has the duty of protecting all citizens in the enjoyment of equality of rights. U.S. v. Cruikshank, 92 U.S. 542.

The Equal Protection Clause of the Federal Constitution means that the rights of all persons, not the majority or those in favor with the government, must rest upon the same rule under similar circumstances, and applies to the exercise of all the powers of the State, not just some, which can effect the individual or his property. Louisville Gas & Electric v. Coleman. 277 U.S. 32. The District Attorney must not be permitted to arbitrarily pick and choose what private criminal complaints he will approve and prosecute. This is a fundamental violation of the U.S. Constitution. The law must be enforced equally without regard to the race, color, creed, political party or personality of the victim or the defendant, Louisiana er. rel. Francis v. Resiveber, 329 U.S. 459.

The best available summary of the Equal Protection Clause is found in Hill v. Texas, 316 U.S. 400. The United States Supreme Court declared that equal protection under the law is something more than an abstract right. It is a command which every citizen may demand.

## APPENDIX V

John Cheppa has the right and does demand that the District Attorney close his eyes as to the identity of the victim and the Defendant and prosecute the criminal charges against Stanley Kitner. The failure to do so renders the Equal Protection Clause of the Fourteenth Amendment an abstract right with no practical meaning. When only those victims who are found in favor with the District Attorney's Office are afforded protection and when those wrongdoers who are found in favor with the District Attorney's Office are not prosecuted, Justice is no longer blind.

APPENDIX W

U.S. CONSTITUTION RAISED IN SECOND COMPLAINT TO TRIAL COURT. JUNE 19, 1991. p . 5 :

9. That, rule No. 133 of the Pennsylvania Rules of Criminal Procedures applied to this instant case is contrary to the United States and State of Pennsylvania Constitutions in that it is arbitrary and capricious by placing in the hands of one person complete control, with no standards, tests, elements or criteria to be followed, whether or not a criminal act can be prosecuted by a private individual.

10. That, the District Attorney's refusal to approve the Private Criminal Complaint in question is contrary to the Constitutions of the United States and Pennsylvania in that it is arbitrary and capricious and does not provide equal protection of the laws and is discriminatory as to the Affiant.

## APPENDIX X

CONSTITUTIONAL ISSUE RAISED IN AFFIANT'S MEMORANDUM TO SECOND COMPLAINT TO TRIAL COURT. JUNE 19, 1991. pp. 17 - 24.

The District Attorney's denial of the Affiant's Private Criminal Complaint also raises several Constitutional questions, for not only did the District Attorney abuse his discretion regarding Pennsylvania Law, but the D.A. has also abused his discretion regarding the United States Constitution.

Effective and fair enforcement of the penal statues in the State of Pennsylvania is of significant public concern. It is of significant concern for three reasons:

First, to properly punish those who violate the statutes.

Second, to deter future violations of the penal laws, and as such, protect innocent citizens.

Third, to meet the demands of the United States Constitution in granting to each citizen due process and equal protection under the law and granting to each citizen -victim the privileges established by the Fifth and Fourteenth Amendments.

When the penal statutes are not being effectively and fairly enforced the citizens of this Commonwealth generally, and victims specifically, suffer losses, tangible and intangible, liquidated and unliquidated. The Fifth Amendment to the United States Constitution provides, in part, that no citizen shall "...be deprived of life, liberty or property, without due process of law." It is common knowledge that the Fifth Amend-

BEST AVAIL

ment is made applicable to the States through the Fourteenth Amendment to the U.S. Constitution. It is also fundamental that the guarantee of due process is absolute. Hammond Packing Co. v. Arkansas, 212 U.S. 322, 29 5. Ct. 370.

John Cheppa, as a victim of the lies and falsehoods of Stanley Kitner, a West Hanover Township employee, suffered substantial losses. He lost attorney's fees, court costs, time off work, and other incidental expenses. He has also suffered emotional stress and fatigue.

The Pennsylvania State Legislature has placed in the hands of the Dauphin County District Attorney not only the right, but also the duty, to enforce the Perjury and False Swearing statute against Stanley Kitner. As such, when a District Attorney is obviously acting under color of State law, arbitrarily and unreasonably and capriciously refusing, without hearing or argument, to prosecute a prima facie criminal case, he is violating the U.S. Constitution's due process clause.

An enormous amount of evidence was presented to the District Attorney w .ch established a prima facie, criminal case against Stanley Kitner. The District Attorney in his opinion failed to address the fact that to obtain a conviction under "False Swearing" the false testimony need not be material. The failure to prosecute Mr. Kitner constitutes an abuse of power which can not be tolerated. Mountain Timber Co. v. Washington, 243 U.S. 219, 37. Ct. 260.

The Fourteenth Amendment to the United States Constitution not only mandates that

ABLE COPY

the States (i.e. the District Attorney) abide by the due process requirements, but it also forbids the District Attorney from denying any "person within his jurisdiction the equal protection of the law. The District Attorney has arbitrarily and capriciously denied John Cheppa, an innocent citizen-victim, protection under the penal laws of this Commonwealth. What greater evidence of a violation of the Equal Protection clause could be presented?

John Cheppa is a property owner, a tax-payer, a voter, an adult, a college graduate, a teacher. Why should he not be protected, as all other citizens, against criminal activity in Dauphin County? The indiscriminate enforcement of the criminal statutes is a violation of the Equal Protection Clause to the victim. He's a victim of a criminal act. He needs "protection from the law." The only person who can provide that protection is the District Attorney. The District Attorney must provide that protection "equally." It is the State, through its office holders, which has the duty of protecting all citizens in the enjoyment of equality of rights. U.S. v. Cruikshank, 92 U.S. 542.

The Equal Protection Clause of the Federal Constitution means that the rights of all persons, not the majority or those in favor with the government, must rest upon the same rule under similar circumstances, and applies to the exercise of all the powers of the State, not just some, which can affect the individual or his property. Louisville Gas Electric Co. v. Coleman, 277 U.S. 32. The District Attorney must not be permitted to arbitrarily pick and choose what private criminal complaints he will approve and prosecute.

APPENDIX X

This is a fundamental violation of the U.S. Constitution. The law must be enforced equally without regard to the race, color, creed, political party or personality of the victim or the defendant, Louisiana ex.rel. Francis v. Resiveber, 329 U.S. 459.

The best available summary of the Equal Protection Clause is found in Hill v. Texas 316 U.S. 400. The United States Supreme Court declared that equal protection under the law is something more than an abstract right. It is a command which every citizen may demand.

John Cheppa has the right and does demand that the District Attorney close his eyes as to the identity of the victim and the Defendant and prosecute the criminal charges against Stanley Kitner. The failure to do so renders the equal Protection Clause of the Fourteenth Amendment an abstract right with no practical meaning.

When only those victims who are found in favor with the District Attorney's Office are afforded protection and when those wrongdoers who are found in favor with the District Attorney's Office are not prosecuted, Justice is no longer blind.

The Fifth Amendment to the United States Constitution also provides in part, that, "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury," The Fourteenth Amendment provides in part, that, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;"

## APPENDIX X

It is common knowledge that the Framers of the first Ten Amendments to the United States Constitution had justice in mind for the citizens. And, the Fifth Amendment was written to protect the rights of the accused (before guilt was established) as well as the rights of the citizens of the United States.

John Cheppa is a citizen-victim, and as such, enjoys the Constitutional right of the Fourteenth Amendment prohibiting the State of Pennsylvania from abridging his privilege of bringing a prima facie case against Stanley Kitner to a Grand Jury as prescribed by the Fifth and Fourteenth Amendments.

However, the Pennsylvania Criminal Procedural Rules Committee has abolished Mr. Cheppa's Fourteenth Amendment privilege of bringing a prima facie case to a Grand Jury, and instead, formulated Rule 133 of the Pa. R. Crim. P., thereby, giving to one man the powers of the entire Grand Jury as prescribed by the Fifth Amendment.

Although the Pennsylvania Criminal Procedural Rules Committee had intended that all cases of a prima facie nature which may be brought to the Attorney for the Commonwealth would be prosecuted, the opposite has taken place in the instant case. A prima facie case establishing Mr. Kitner's guilt of perjury and false swearing was brought to the District Attorney and the criminal was set free.

Presently, the Attorney for the Commonwealth has no standards, tests, elements or criteria to be followed regarding his decision as to whether or not a criminal act can, or should be prosecuted by a private individual. The Pennsylvania

## APPENDIX X

Criminal Procedural Rules Committee had intended that the D.A. would respect a citizen-victim's rights as recited by the Fifth and Fourteenth Amendments and allow prosecution of a prima facie case as a Grand Jury would have. The District Attorney has not acted that way, which again, is a gross abuse of discretion.

APPENDIX Y

US CONSTITUTION RAISED IN EXCEPTIONS TO SECOND CASE. JULY 1, 1991. p. 7:

9. **SAID** Order is contrary to the United States and the State of Pennsylvania Constitutions in that it allows for the arbitrary and capricious application of criminal law by placing in the hands of one person complete control, with no standards, tests, elements or criteria to be followed, over whether or not a criminal act can be prosecuted by a private individual.

10. **SAID** Order is contrary to the Constitutions of the United States and Pennsylvania in that it is arbitrary and capricious and does not provide equal protection of the laws and is discriminatory as to the Affiant.

11. **SAID** Order is contrary to the Constitutions of the United States and Pennsylvania in that it is arbitrary and capricious and abolishes the Affiant's right to bring his allegations establishing the Defendants guilt in a prima facie case to a Grand Jury.

APPENDIX Z

BRIEF TO EXCEPTIONS OF SECOND CASE. JULY 10, 1991. pp. 10 - 11. ARGUED WITH EXCEPTIONS TO FIRST CASE.

Moreover, to deny Private Prosecution to the affiant in this prima facie case is to deny to the Affiant his United States Constitutional rights of "Equal Protection", "Due Process" and "Abrogation of Citizen's Privileges".

## APPENDIX AA

U.S. CONSTITUTION RAISED IN BRIEF TO PA. SUPERIOR COURT, pp. 14 - 15, & 43 - 49:

STATEMENT OF THE CASE:

Finally, the abrogation of the Grand Jury system, said system being provided for by the Constitution of the United States, made it possible for the District Attorney to make a capricious decision to disapprove the complaints without foundation and contrary to the facts presented to him. Mr. Cheppa, your Appellant, was denied the equal protection of the law because of the decision of one man, the District Attorney.

ISSUE NUMBER 8:

Effective and fair enforcement of the penal statues in the State of Pennsylvania is of significant public concern. It is of significant concern for two reasons. First, to properly punish those who violate the statutes. Second, to deter future violations of the penal laws, and as such, protect innocent citizens.

When the penal statutes are not being effectively and fairly enforced the citizens of this Commonwealth generally, and victims specifically, suffer losses, tangible and intangible, liquidated and unliquidated. The Fifth Amendment to the United States Constitution provides, in part, that no citizen shall '..be deprived of life, liberty or property, without due process of law." The Fifth Amendment is made applicable to the States through the Fourteenth Amendment to the U.S. Constitution. It is also fundamental that the guarantee of due process is absolute. Hammond Packing Co. v. Arkansas, 212 U.S.

APPENDIX AA

322, 29 S. Ct. 370

John Cheppa, as a victim of the lies and falsehoods of Stanley Kitner, a West Hanover Township public official, suffered substantial losses. He lost attorney's fees, court costs, time off work, and other incidental expenses. He has also suffered emotional stress and fatigue.

The Pennsylvania State Legislature has placed in the hands of the Dauphin County District Attorney not only the right, but also the duty, to enforce the perjury and false swearing statute against Stanley Kitner. As such, when a District Attorney and Court, obviously acting under color of State law, arbitrarily and unreasonably and capriciously refuse, without hearing to prosecute a prima facie criminal case, they are violating the U.S. Constitution's due process clause.

An enormous amount of evidence was presented to the District Attorney and the court which established a prima facie criminal case against Stanley Kitner. Neither the District Attorney nor the Court in its Opinion addressed the fact that to obtain a conviction under "false swearing" the false testimony need not be material. The failure to prosecute Mr. Kitner constitutes an abuse of power which can not be tolerated. Mountain Timber Co. v. Washington, 243 U.S. 219 37, Ct. 260.

The Fourteenth Amendment to the .5, Constitution not only mandates that the States (i.e. the District Attorney) abide by the due process requirements, but it also forbids the District Attorney from denying any "person within his jurisdiction the equal protection of the law."

APPENDIX AA

District Attorney has arbitrarily and capriciously denied John Cheppa, an innocent citizen-victim, protection under the penal laws of this Commonwealth. This constitutes a violation of the Equal Protection clause.

John Cheppa is a property owner, a taxpayer, a voter, an adult, a college graduate, a teacher. Why should he not be protected, as all other citizens, against criminal activity in Dauphin County? The indiscriminate enforcement of the criminal statutes is as much a violation of the Equal Protection Clause to the victim as to the Defendant. He is a victim of a criminal act. He needs "protection from the law." The only person who can provide that protection is the District Attorney. The District Attorney must provide that protection "equally." It is the State, through its office holders, which has the duty of protecting all citizens in the employment of equality of rights. U.S. v. Cruikshank, 92 U.S. 542.

The Equal Protection Clause of the Federal Constitution means that the rights of all persons, not the majority or those in favor with the government, must rest upon the same rule under similar circumstances, and applies to the exercise of all the powers of the State, not just some, which can effect the individual or his property. Louisville Gas & Electric v. Coleman, 277 U.S. 32. The District Attorney must not be permitted to arbitrarily pick and choose what private criminal complaints he will approve and prosecute. This is a fundamental violation of the U.S. Constitution. The law must be enforced equally without regard to the race, color, creed, political party

APPENDIX AA

or personality of the victim or the defendant, Louisiana er. rel. Francis v. Resiveber, 329 U.S. 459.

The best available summary of the Equal Protection Clause is found in Hill v. Texas, 316 U.S. 400. The United States Supreme Court declared that equal protection under the law is something more than an abstract right. It is a command which every citizen may demand.

John Cheppa has the right and does demand that the District Attorney close his eyes as to the identity of the victim and the Defendant and prosecute the criminal charges against Stanley Kitner. The failure to do so renders the Equal Protection Clause an abstract right with no practical meaning. When only those victims who are found in favor with the District Attorney's Office are afforded-protection and when those wrongdoers who are found in favor with the District Attorney's Office are afforded protection and when those wrongdoers who are found in favor with the District Attorney's Office are not prosecuted, justice is no longer blind.

ISSUE NUMBER 9

Amendment Five to the United States Constitution states, "No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury..." John Cheppa as not afforded his Constitutional right to have his criminal charges approved or disapproved by a grand jury as provided for by the U.S. Constitution. In place of the grand jury, Dauphin County, Pennsylvania has chosen to entrust one person, the District Attorney, with power to

to decide whether or not to prosecute persons for crimes. The basic function of the grand jury is to provide a fair method for instituting criminal proceedings against persons believed to have committed crimes, and historically, to protect the public from overzealous prosecutors by interposing a lay buffer between them. United States v. Shober, 489 F. Supp. 393. (D.C. Pa. 1979). Just as the court in Shober held that the grand jury system should be used to protect criminal defendants against the decisions of one man, the prosecutor, so must the Grand jury system (or an alternative approval process) be used to protect the rights of the innocent victims of crime.

The grand jury system is one of the oldest and most distinguished tribunals connected with the administration of criminal law. In re: Charge to Grand Jury. 97 P.L.J. 115 (Pa. O. & T. 1949). John Cheppa was denied one of the oldest, well established rights of common law, the right to a determination of probable cause by a grand jury. The differences between a grand jury and the District Attorney are such that John Cheppa was subject to the prejudices and the established thought of one person. The District Attorney of Dauphin County, as an elected official for a limited term, is by definition, a political being. In contrast, the grand jury is composed of citizens which constitute a fair cross section of a judicial district; who are not affiliated with one political party; and who, ideally, do not have an interest in any criminal proceedings. These private criminal complaints would have been approved by a grand jury panel. The denial of Appellant's constitutional

right to a grand jury constituted great prejudice to Mr. Cheppa.

In the case of Commonwealth v. Liebowitz, 17 A.2d 719, 143 Pa. Super. 75 (1941) the Superior Court of Pennsylvania found that the legislature could not abolish the grand jury. Nevertheless, the Pennsylvania Legislature has chosen to abolish the grand jury system and, in its place, rest the power of prosecution in the hands of one person, the District Attorney.

In the past year in Dauphin County the District Attorney has chosen to act on the complaints of other persons in regard to, among other matters, the closing of a bar room in the case of Commonwealth v. Vanity Bar 4889 s 1990 within the City of Harrisburg. However, the District Attorney has chosen to ignore the allegations of perjury and false swearing committed by a public official. Was the District Attorney's decision not to prosecute Stanley Kitner in some way connected with the political power of Stanley Kitner, a West Hanover Township Official? Obviously, it is in the best interest of the District Attorney not to prosecute those persons who will support his reelection bid.

Appellant asserts that if he would have been afforded his Constitutional right of protection against crimes by the impanelment of a grand jury his criminal complaints would have been approved. he refusal of the District Attorney to approve appellant's private criminal complaints is entirely capricious, without foundation and for the reasons set forth above, unconstitutional.

APPENDIX BB

U.S. CONSTITUTION RAISED IN PETITION FOR ALLOWANCE OF APPEAL TO STATE SUPREME COURT. June 29, 1992. PP. 15 - 17:

If the Superior Court's decision is not reviewed by this Honorable Court, each county prosecutor will be able to control and dictate which citizen's private criminal complaints are approved and which are denied regardless of the nature of the crime and the amount of evidence presented to the district attorney. The result will be the iniquitous favoring of the culpable when accused by the nonpartisan and, to a greater extent, the prosecution of the innocent when accused by a disciple of the district attorney.

The Fifth Amendment to the United States Constitution states, "No person shall be held to answer for a capital or other infamous crime unless on a presentment or indictment of a grand jury..." [Exhibit "8"].

The Pennsylvania Legislature has placed in the hands of the Dauphin County District Attorney, not only the right, but also the duty, to enforce the penal laws of this Commonwealth. As such, when a district attorney, action under color of State law, arbitrarily, unreasonably and capriciously refuses to prosecute a prima facie criminal case, he is violating the due process requirements of the Fifth Amendment to the United States Constitution and the decisional law of the Pennsylvania Supreme Court.

The Fourteenth Amendment to the U.S. Constitution not only mandates that the States (i.e. the district attorney) abide by due process and equal protection requirements, but it

also forbids the district attorney from denying any "person within his jurisdiction the equal protection of the law." [Exhibit "9"]. The district attorney has arbitrarily and capriciously denied John Cheppa, and innocent victim, protection under the penal laws of this Commonwealth contrary to the equal protection clause.

Because Pennsylvania's laws defining perjury and false swearing must be preserved; because the appellate Court below affirmed the trial court's order contrary to the applicable decisions of the Supreme Court of Pennsylvania; because the Appellate Court below departed from the excepted and usual course of judicial proceedings by failing to follow case law established by the Supreme Court of Pennsylvania; because the Superior Court in the instant case at No. 498 HBG. 1991 rendered a decision in conflict to the or Court's order at No. 1616 Pitt. 1986, 373 Pa. Super. 629, A.2d 821: because the Superior Court's order in the instant case renders a clear and present danger to the community and is of immediate public importance; because the Appellate Court below decided a question of substance not heretofore determined by the Supreme Court of Pennsylvania regarding the Commonwealth's usurpation of discretion the issue of materiality concerning perjury; and because the order of the Superior Court has sanctioned a violation of the Appellant's constitutional rights, your Honorable Court should approve the Appellant's petition for allowance of appeal.

For these reasons the Supreme Court should allow this appeal and reverse the decisions of the District Attorney, the

trial court and the Superior Court.

# APPENDIX CC

## 42 Pa. C. S. A. 5552 LIMITATION OF TIME

Other offenses

(a) General rule. - Except as otherwise provided in this subchapter, a prosecution for an offense other than murder or volun-tary manslaughter must be commenced within two years after it is committed.

(b) Major offenses. - A prosecution for any of the following offences under title 18 (relating to crimes and offences) must be commenced within five years after it is committed:

Section
3123 (relating to involuntary deviate sexual intercourse).
3301 (relating to arson and related offenses).
3502 (relating to burglary).
3701 (relating to robbery).
4101 (relating to forgery).
4902 (relating to perjury).

(c) Exceptions. - If the period pre-scribed in subsection (a) or subsection (b) has expired, a prosecution may nev-ertheless be commenced for:

(1) Any offence a material element of which is either fraud or a breach of fi-duciary obligation within one year after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself not a party to the offense, but in no case shall this paragraph

extend the period of limitation otherwise applicable by more that three years.

(2) Any offense committed by a public officer or employee in the course of or in connection with his office or employment at any time when the defendant is in public office or employment or within five years thereafter, but in no case shall this paragraph extend the period of limitation otherwise applicable by more than eight years.

(d) Commission of offense. - An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the complicity of the defendant therein is terminated. Time starts to run on the day after the offense is committed.

(e) Commencement of prosecution. - Except as otherwise provided by general rule adopted pursuant to section 5503 (relating to commencement of matters), a prosecution is commenced either when an indictment is found or an information under section 8931(b) (relating to indictment and information) is issued, or when a warrant, summons or citation is issued, if such warrant, summons or citation is executed without unreasonable delay.

1976, July 9, P.L. 586, No. 142, 55 2, effective June 27, 1978. As amended.

APPENDIX DD

COMMONWEALTH of PENNSYLVANIA
Appellant,

v.

JOSEPH E. BENZ,
Appellee.

Supreme Court of Pennsylvania, Argued March 9, 1989.
Decided November 1, 1989.

Before NIX, C.J., and LARSEN, FLAHERTY, McDERMOTT, ZAPPALA and PAPADAKOS, JJ.

Victim's mother sought judicial review of district attorney's disapproval of private criminal complaint. The Court of Common Pleas, Allegheny County, No. Misc. 576 July 1986 (Criminal Division). Robert E. Dauer, J., denied approval after review of record, and mother appealed. The Superior Court, No. 1616 Pittsburgh 1986, 373 Pa. Super. 629, 536 A.2d 821, reversed in an unpublished opinion. The Commonwealth appealed. The Supreme Court, No. 67 W.D. Appeal Docket 1988, Nix C.J., held that: (1) the Superior Court had jurisdiction to hear the appeal, and (2) evidence established prima facie case of voluntary manslaughter which warranted approval of the private criminal complaint.

Affirmed.

NIX, Chief Justice.

The subject of this discretionary appeal raised by the Commonwealth is the Superior Court's order reversing the lower court's disapproval of a private criminal complaint and directing that such a complaint be authorized pursuant to Pa.R.

APPENDIX DD

Crim.P. 133. The fundamental issue presented in this appeal is whether a decision not to prosecute on the ground of lack of evidence to establish a prima facie case, made by the office of the district attorney and confirmed by a judge of the court of common pleas, is reviewable by the Superior Court. The Commonwealth's framing of the issue has tended to obfuscate the relatively straight-forward question legitimately raised. Additionally, the Commonwealth has attempted to implicate constitutional principles and principles of law not presently germane to the instant inquiry. For the reasons that follow, we conclude that the Superior Court did have jurisdiction to hear the appeal pursuant to 42 Pa.C.S. ss 742.2 Moreover, that court correctly concluded that there was sufficient evidence to establish a prima facie case. Therefore, we affirm the order of the Superior Court.

This case arose out of an altercation between Paaron Jones and Officer Joseph E. Benz of the Pittsburgh Police Department. On June 29, 1981, both men were in the West Penn Memorial Hospital to visit patients. While still in the lobby, Officer Benz, who was not in uniform, entered the elevator with packages for his ailing wife. Paaron Jones approached the elevator to speak with another passenger whom he knew. At the time Mr. Jones was on crutches with a broken leg in a cast and smelled of alcohol. He held the elevator door open with one of the crutches and continued to converse with the passenger on the elevator. After some delay of the elevator an argument began between Jones and Benz, resulting in Jones striking Benz with his crutch. After Benz had retrieved his packages and entered a second elevator, Jones again stuck Benz, send-

ing him to the floor. While Benz was still on the floor, Jones struck him across the back with a crutch. Realizing that the altercation was getting out of control, Benz pulled out his badge and firearm and identified himself as a police officer. At that time Jones attempted to flee through the front exit and Benz pursued him with his firearm drawn, stating that he was under arrest and he should lie face down on the floor. Instead, a scuffle again resul-ted. This time, however, Benz had his gun exposed. During the fight the gun discharged and Jones was struck in the head with the bullet. The emergency unit was able to save Jones only for him to live in a vegetative state for four years until July 25, 1985, when he died as a result of the gunshot wound.

After Jones's death an open inquest was conducted by the coroner, and the coroner's jury recommended that Benz be charged with voluntary manslaughter. Nevertheless, the District Attorney of Allegheny County did not file charges. The District Attorney decided that the eyewitness testimony was so disjointed as to make it inconclusive and instead relied on medical evidence of possible power burns on the victim's head and scientific evidence concerning the retention of the shell of the bullet in the chamber of the gun. That evidence seemed to indicate that the victim was in close proximity to Benz when the gun discharged. That conclusion supported he claims made by Benz that the two men were wrestling over the weapon and that the shot was fired accidentally.

In September of 1985 the District Attorney's office sought review of its decision from the Office of the Attorney

General. The District Attorney's office turned over all its files concerning the matter and fully cooperated with the investigation by the Attorney General. In February of 1986 that office concluded that no abuse of prosecutorial discretion had occurred; that a fair investigation had been conducted by that office; and that the filing of criminal charges in this matter would have been inappropriate and unsupported by the available evidence.

On May 21, 1986 Laverda Hicks, the mother of the victim, then sought approval of a private criminal complaint pursuant to Pa.R.Crim.P. 133. That rule states:

(a) When the affiant is not a law enforcement officer and the offense(s) charged include(s) a misdemeanor or felony which does not involve a clear and present danger to any person or to the community, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove without unreasonable delay.

(b) If the attorney for the Commonwealth

(1) Approves the complaint, the attorney shall indicate this decision on the complaint form and transmit it to the issuing authority;

(2) Disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. Thereafter the affiant may file the complaint with a judge of a Court of Common Pleas for approval or disapproval

APPENDIX DD

(3) Does not approve or disapprove within a reasonable period of time, the affiant may file the complaint on a separate form with the issuing authority, noting thereon that a complaint is pending before an attorney for the Commonwealth. The issuing authority shall determine whether a reasonable period has elapsed, and, when appropriate, shall defer action to allow the attorney for the Commonwealth an additional period of time to respond.

The District Attorney disapproved the complaint on the grounds that insufficient evidence existed to establish that a crime had been committed. Subsequently, Ms. Hicks sought judicial review of the matter. The court of common pleas accepted the petition but denied approval after a review of the record. It held that the district attorney did not abuse his discretion by not prosecuting Benz. 3 Ms. Hicks appealed to the Superior Court for a review of the final order of the court of common pleas pursuant to 42 Pa.C.S. ss 742 and Pa. R.A.P. 1112. The Superior Court reversed the lower court and determined that evidence was available to establish a prima facie case.

In this case, the Commonwealth stated as its reason for the decision not to prosecute the lack of evidence sufficient to establish a prima facie case.4 Therefore, a court is required to review the appropriateness of that determination. It has always been the burden of the Commonwealth, if it intends to proceed with prosecution, to establish a prima facie case that

a crime has been committed and that the accused is the one who committed it. Commonwealth v. Mullen, 460 Pa. 336, 333 A2.d 755 (1975); see also, Commonwealth v. Ruza, 511 Pa. 59, 511 A.2d 808 (1986): Commonwealth v. Wojdak, 502 Pa. 359, 466 A.2d 991 (1983). Traditionally, the final determination of sufficiency of the evidence has been a judicial judgement. Rice v. Shuman, 513 Pa. 204, 519 A.2d 391 (1986); Commonwealth v. Shaver, 501 Pa. 17, 460 A.2d 742 (1983). This is to be distinguished from the prosecutorial discretion not to bring prosecution even if a prima facie case may be established from the evidence available. See, e.g. Pugach v. Klein, 193 F.Supp. 630 (S.D.New York 1961).

[1] The evidence in this instance unquestionably established a homicide. 5 It is also unquestioned that the person responsible for the death of Paaron Jones was Officer Benz. Whether the homicide was jusifiable or excusable is a matter of defense. Commonwealth v. Capitolo, 508 Pa. 372, 498 A.2d 806 (1985); 18 Pa.C.S. ss 503. Thus, evidence as to justification or excuse would not negate a determination of a prima facie case, but is a matter that is properly raised in defense at trial. See, e.g. Commonwealth v. Reilly, 519 Pa. 550, 549 A.2d 503 (1988); Commonwealth v. Warren, 475 Pa. 31, 379 A.2d 561 (1977). Therefore, with sufficient evidence to establish a prima facie case. the Superior Court correctly reversed the lower court's holding that the district attorney's decision not to prosecute Officer Benz was proper for the reasons stated.

The Commonwealth seeks to raise the question of the constitutional principle of separation of powers in this instance

by asserting that judicial intervention impermissibly trammelled upon the prosecutorial discretion. The fallacy of this argument is its lack of relevancy. 6 The prosecutor in this instance never purported to predicate his decision not to prosecute upon the exercise of his prosecutorial discretion to make policy. He expressly stated that the decision to decline prosecution resulted from his determination the evidence would not sustain a prima facie case. Thus the issue before both lower courts required an assessment of that legal judgment and not an intrusion upon prosecutorial discretion. Had the district attorney utilized policy discretion to refuse prosecution and had the lower courts reviewed that decision, the question of separation of powers would have been appropriately raised. However, we need not stray from the issues properly presented to decide this case.

[2] In this case, the prosecutorial decision not to prosecute was based upon a legal determination of the sufficiency of the evidence to establish a prima facie7 case. This type of decision is within the purview of the judicial system to review. The Superior Court found that sufficient evidence existed to sustain a prima facie case and ordered that the district attorney's office commence prosecution. 8

Accordingly, we affirm the Order of the court.

FOOTNOTES

1. The caption to this case is misleading because, although the Commonwealth is the appellant, Joseph E. Benz, who is listed as the appellee, is not a party to this

case and has not filed a brief. The true appellee in this case is the private complainant, Laverda Hicks, the mother of the descendant.

2. 42 Pa.C.S.A. ss 742, Appeals from courts of common pleas.

The Superior Court shall have exclusive appellate jurisdiction of all appeals from final Orders of the courts of common pleas, regardless of the nature of the controversy or the amount involved, except such classes of appeals as are by and provision of this chapter within the exclusive jurisdiction of the Supreme Court or the Commonwealth Court.

3. The trial court found that the "eye witness" testimony was inconclusive, and therefore the District Attorney was correct to rely upon the scientific evidence. The scientific evidence, to which the trial court refers as supporting the District Attorney's disapproval of the private complaint, is the report from the state police laboratory regarding the "retained cartridge theory".

4. If the district attorney had stated policy reasons to support the decision not to prosecute, this Court would show the deference accorded to such a discretionary use of the executive powers conferred in that officer. However, because the reason stated was the ultimate determination of the district attorney that no crime had been committed, this Court is authorized to review that determination without the special deference afforded a separate branch of government.

5. Homicide is defined in 18 Pa.C.S. ss2501 as follows:

APPENDIX DD

(a) Offense defined- A person is guilty of criminal homicide f he intentionally, knowingly, recklessly or negligently causes the death of another human being.

It also has been stated that a homicide may be lawful or unlawful. "A homicide which is neither justifiable nor excusable is unlawful." See, e.g. Wharton's Criminal Law ss112-151 (14th ed. 1979).

6. It also should be noted that the Commonwealth is not claiming the impropriety of any judicial review of the decision not to prosecute. Instead, the Commonwealth concedes the authority of the trial judge to review that decision, but argues that appellate review of the court of common pleas' decision is violative of the separation of powers principle. But see, In Re Wood, 333 Pa.Super. 597, 482 A.2d 1033 (1984); Commonwealth v. Eisemann, 276 Pa.Super. 543, 419 A.2d 591 (1980). Such an argument would allow a judicial inquiry into the decision of the district attorney without providing for a mechanism to correct any improper assessment of that decision.

7. The district attorney in this case elected to impanel a coroner's inquest to aid in the investigation of the incident, and that jury recommended that Officer Benz be charged with voluntary manslaughter. While this is not binding on the prosecutor. It is significant that this panel determine the existence of evidence that would support a Prima facie case.

8. It is to be noted that neither of the parties has questioned

the applicability of the procedure provided for under Rule 133 to the instant facts. Rule 133(a) provides in pertinent part, "...and the offense(s) charged include(s) a misdemeanor or felony which does not involve a clear and present danger to any person or to the community,..." In this case the alleged criminal charge was a homicide. Not with-standing, the objection would have been a procedural one, not implicating subject matter jurisdiction, thus waivable if not properly raised. Commonwealth v. Capitolo, 508 Pa. 372, 498 A.2d 80 (1985). As stated, this objection was not raised and, accordingly, the issue is waived.

APPENDIX EE

COMMONWEALTH of PENNSYLVANIA
Appellant,

v.

JOSEPH E. BENZ, Appellee.

Supreme Court of Pennsylvania,
Argued March 9, 1989.
Decided November 1, 1989.

Before NIX, C.J., and LARSEN, FLAHERTY, McDERMOTT, ZAPPALA and PAPADAKOS, JJ.

LARSEN, J., files a concurring Opinion.

I concur in the result only. I write separately to express my vehement disagreement with the majority's interpretation and application of Pa.R. Crim.P. Rule 133.

Rule 133 provides in relevant part:

(a) When the affiant is not a law enforcement officer ... the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove without unreasonable delay.

(b) If the attorney for the Commonwealth

(2) Disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant-. Thereafter the affiant may file the complaint with a judge of a Court of Common Pleas for approval or disapproval: (emphasis added).

The rule does not state that the common

pleas court judge shall act in an appellate capacity when approving or disapproving a private criminal complaint. Nor does the rule state the court's function in approving or disapproving a private criminal complaint is to assess whether the prosecutor abused his or her discretion in disapproving the complaint. Thus, it does not matter on what basis the prosecutor makes his or her decision for the matter to be, "within the purview of the judicial system to review". Maj. op. at 768.1 Indeed, soon after Rule 133 went into effect, Superior Court correctly noted that the rule "protects the interest of the private complainant by allowing for the submission of the disapproved complaint to a judge of a court of common pleas. The judge's independent review of the complaint checks and balances the district attorney's decision and further hedges against possibility of error." Petition of Piscanio, 235 Pa. Super. 490, 494-95, 344 A.2d 58, 661 (1975), allo catur denied (emphasis added).

The Commonwealth, as appellant in this case, has lost sight of the fact that throughout the history of this Commonwealth and until 1974, private criminal complaints were not subject to review by the district attorney. From time immemorial, the right of the citizen to seek redress in the courts has always been preserved. And it was for the courts, through the office of an issuing authority, to determine, before issuing process, whether, l) the complaint was properly completed and executed; 2) the affiant was a responsible person; 3) there was probable cause for the issuance of process. Pa.R.Crim.P. Rule 106 as adopted

Jan. 31, 1970, eff. May 1, 1970.

Clearly, the changes that were made to this procedure were not intended to radically alter the practice of instituting criminal proceedings by private criminal complaint. Rather, the changes were intended to enable the district attorney to merely weed out frivolous cases. If the private complainant is not satisfied with the determination of the district attorney under the present rules of procedure, he or she still has, and must have, access to the judiciary. The changes made to our rules of criminal procedure merely concerned who was to approve the complaint in the first instance. In fact, with regard to related amendments made to the rules of criminal procedure in 1974, the comment to Rule 134 stated simply that it was now for the district attorney to "evaluate the responsibility of the charge contained in the complaint". Comment to Rule 134 as adopted Sept. 18, 1973, eff. Jan. 1, 1974.

Thus, by preserving the right of a private complainant to obtain the independent approval or disapproval of the complaint by a judge of the court of common pleas, Rule 133 does not contemplate that criminal proceedings initiated by private complaint will be subject to the "policy" and discretion of the district attorney.

In addition, the majority raises the issue of whether "the procedure provided for under Rule 133 applies to the instant facts". Maj. op. at 786 n.7. If the implication of the majority is that Rule 133 does not apply to this case, in spite of the fact that the issue may have been waived, I agree, because the approval of a private criminal complaint by a district attorney or a judge

of the court of common pleas is only necessary where the offense charged does not involve a clear and present danger to any person or to the community. In all other cases, i.e. those involving charges that present a clear and present danger to any person or to the community, the district attorney does not act as a buffer between the private complainant and the issuing authority. Thus, upon the filing of a private criminal complaint involving acts which constitute a clear and present danger to any person or to the community, the issuing authority must conduct a preliminary hearing. As this case involves a charge of homicide, the approval of the district attorney pursuant to Rule 133 was not necessary.

## FOOTNOTES

1. The majority seem to be of the opinion that the decision of the prosecutor can only be reviewed by the court where it is based on the merits of the case and not on some nebulous matter of policy.

APPENDIX FF

COMMONWEALTH of PENNSYLVANIA
Appellant,

v.

JOSEPH E. BENZ,
Appellee.

Supreme Court of Pennsylvania,
Argued March 9, 1989.
Decided November 1, 1989.

Before NIX, C.J., and LARSEN, FLAHERTY, McDERMOTT, ZAPPALA and PAPADAKOS, JJ.

PAPADAKOS, Justice, dissenting, joined by McDERMOTT, J.

I decent. The majority makes the exercise of prosecutorial discretion in refusing to prosecute justiciable. That is error in my opinion. Long ago, this Court recognized that a district attorney's power to approve or disapprove private criminal complaints is consistent with that office's unreviewable authority to initiate or discontinue prosecutions generally. Commonwealth v. Ragone, 317 Pa. 113, 176 A. 454 (1935). Pa. R.Crim.P. 133 protects the interests of the private complainant (often times, the victim) by allowing for the submission of a disapproved private complaint to a trial judge whose independent review checks and balances the district attorney's decision and further hedges against possible error. At least, that is the theory behind the adoption of Rule 133 as set out in the A.B.A. Project on Standards for Criminal Justice. Standards Relating to the Prosecution Function and the Defense Function, ss 3.4 (and the comments thereto) (Approved Draft, 1971),

upon which the Rule was based. History, logic and efficiency require that this limitation on a prosecutor's discretion must be read as narrowly as possible least we make the already overburdened criminal justice system wholly impossible to administer. Read in that light, I am convinced that a trial judge's decision to agree with a district attorney's judgment not to prosecute is unreviewable and, for the reason that, inter alia, the private complainant has no standing to appeal. In his dissent in In Re Wood, 333 Pa. Superior Ct. 597, 482 A.2d 1033 (1984), Judge Del Sole put it this way, correctly in my opinion:

Pa.R.Crim.P. 133(B) gives a victim-complainant the right to seek approval from the Court of Common Pleas of a private criminal complaint which has been disapproved by the district attorney. However, that rule of court does not make the victim-complainant a party to the action. Criminal prosecutions are not to settle private grievances, but are to rectify the injury done to the Commonwealth. The individual who is the victim of a crime only has recourse to a civil action for damages.... The Court in [Commonwealth v. ] Malloy [, 304 Pa. Superior Ct. 297, 4SO A.2d 689 (1982).] cited with approval the language of the United States Supreme Court in Linda R.S. v. Richard D. & Texas, at al., 410 U.S. 614, 619, 935.Ct. 1146, 1149, 35 L.Ed.2d 536 (1973). that "...a citizen lacks standing to contest the polices of the prosecuting attorney when he himself is neither prosecuted nor threatened with prosecution ...(I)n American jurisprudence at least, a private citizen lacks a judicially cognizable interest in the prosecution or non

prosecution of another." The state is the party-plaintiff in a criminal prosecution. The victim-complainant is not a party to the proceeding. The victim acts only as a prosecuting witness, even in the case of a private criminal complaint... Therefore, the victim complainant has no standing to appeal from the disapproval of private criminal complaints...

482 A.2d at 1037. See also, Judge Cirillo's dissent in Commonwealth v. Muroski, 352 Pa. Superior Ct. 15, 33, 50 A.2d 1312, 1323 (1986). I would expressly disapprove of the majority opinions in In Re Wood and Commonwealth v. Muroski, supra, to the opposite effect, as being unwise and contrary to law.

APPENDIX GG
[410 US 614]

LINDA R.S. Appellant,
v
RICHARD D. and Texas et al.

410 US 614, 35 L Ed 2d 536, 93 5 Ct 1146
[No. 7-6078]

Argued December 6, 1972
Decided March 5, 1973.

OPINION OF THE COURT

Mr. Justice Marshall delivered the opinion of the Court.

Appellant, the mother of an illegitimate child, brought this action in United States District Court on behalf of herself, her child, and others similarly situated to enjoin the "discriminatory application' of Art 602 of the Texas Penal Code. A three judge court was convened pursuant to 28 usc ss 2281 [28 USCS ss 2281], but that court dismissed the action for want of standing. See 335 F Sopp 804 (ND Tex 1971). We postponed consideration of jurisdiction until argument on the merits, 405 US 1064, 31 L Ed 2d 793, 92 5 Ct 1520, and now affirm the judgment below.

Article 602, in relevant part, provides: "any parent who shall willfully desert neglect or refuse to provide for the support and maintenance of his or her child or children under eighteen years of age, shall be guilty of a misdemeanor, and upon

conviction, shall be punished by confinement in the County Jail for not more than two years." The Texas courts have consistently construed this statute to apply solely to the parents of legitimate children and to impose no duty of support on the parents of illegitimate children. See Home of the Holy Infancy V Kaska, 397 SW2d 208, 210 (Tex 1966); Bever v State, 96 tex Cr R 179, 256 SW 929 (1923). In the complaint, appellant alleges that one Richard D. is the father of her child, that Richard D. has refused to provide support for the child, and that although appellant made application to the local district attorney for enforcement of Art 602 against Richard D., the district attorney refused to take action for the express reason that, in his view, the father of illegitimate children were not within the scope of Art 602.

Appellant argues that this interpretation of Art 602 discriminates between legitimate and illegitimate children without rational foundation and therefore violates the Equal Protection Clause of the Fourteenth Amendment. ... Although the complaint is not entirely clear on this point, she apparently seeks an injunction running against the district attorney forbidding him from declining prosecution on the ground that the unsupported child is illegitimate.

[1] Before we can consider the merits of appellant's claim or the propriety of the relief requested, however, appellant must first demonstrate that she is entitled to invoke the judicial process. She must, in other words, show that the facts alleged present the court with a "case or controversy" in the constitu-

tional sense and that she is a proper plaintiff to raise the issues sought to be litigated. The threshold question which must be answered is whether the appellant has "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."... [2.3] Recent decisions by this Court have greatly expanded the types of "personal stake[s]" which are capable of conferring standing on a potential plaintiff. ... But as we stated only last term "broadening the categories of injury that may be alleged in support of standing is a different matter from abandoning the requirement that the party seeking review must himself have suffered an injury." ... Although the law of standing has been greatly changed in the last 10 years, we have steadfastly adhered to the requirement that, at least in the absence of a statute expressly conferring standing, federal plaintiffs must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction. [4-6] Applying this test to the facts of this case, we hold that, in the unique context of a challenge to a criminal statute, appellant has failed to allege a sufficient nexus between her injury and the government action which she attacks to justify judicial intervention. To be sure, appellant no doubt suffered an injury stemming from the failure of the child's father to contribute support payments. But the bare existence of an abstract injury meets only the first half of the standing requirement. "The party who invokes [judicial] power must be able to show that he has

sustained or is immediately in danger of sustaining some direct injury as the result of [a statute's] enforcement." As this Court made plain in Flast v. Cohen, supra, a plaintiff must show "a logical nexus between the status asserted and the claim sought to be adjudicated....Such inquiries into the nexus between the status asserted by the litigant and the claim he presents are essential to assure that he is a proper and appropriate party to invoke federal judicial power."

Here, appellant has made no showing that her failure to secure support payments results from the nonenforcement, as to her child's father, of Art 602. Although the Texas statute appears to create a continuing duty, it does not follow the civil contempt model whereby the defendant "keeps the keys to the jail in his own pocket" and may be released whenever he complies with his legal obligations. On the contrary, the statute creates a completed offense with a fixed penalty as soon as a parent fails to support his child. Thus, if appellant were granted the requested relief, it would result only in the jailing of the child's father. The prospect that prosecution will, at least in the future, result in payment of support can, at best, be termed only speculative. Certainly the "direct" relationship between the alleged injury and the claim sought to be adjudicated, which previous decisions of this Court suggest is a prerequisite of standing, is absent in this case.

[4,7,8] The Court's prior decisions consistently hold that a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted not threat-

ened with prosecution.

Although these cases arose in a somewhat different context, they demonstrate that, in American jurisprudence at least, a private citizen lacks a judicially cognizable interest in the prosecution or non prosecution of another. Appellant does have an interest in the support of her child. But given the special status of criminal prosecutions in our system, we hold that appellant has made an insufficient showing of a direct nexus between the vindication of the interest and the enforcement of the State's criminal laws. The District Court was therefore correct in dismissing the action for want of standing, and its judgment must be affirmed.

## APPENDIX HH

## SEPARATE OPINION

MR. JUSTICE WHITE, WITH WHOM MR. JUSTICE DOUGLAS JOINS, DISSENTING.

Appellant Linda R.S. alleged that she is the mother of an illegitimate child and that she is suing "on behalf of herself, her minor daughter, and on behalf of all other women and minor children who have sought, are seeking, or in the future will seek to obtain support for so-called illegitimate children from said child's father." Appellant sought a declaratory judgment that Art 602 is unconstitutional and an injunction against its continued enforcement against fathers of legitimate children only. Appellant further sought an order requiring Richard D., the putative father, "to pay a reasonable amount of money for the support of his child."

Obviously, there are serious difficulties with appellant's complaint insofar as it may be construed as seeking to require the official appellees to prosecute Richard D. or others, or to obtain what amounts to a federal child-support order. But those difficulties go to the question of what relief the court may ultimately grant appellant. They do not affect her right to bring this class action. The Court notes, as it must, that the father of a legitimate child, if prosecuted under Ar 602, could properly raise the statute's under-inclusiveness as an affirmative defense. ... Presumably, that same father would have standing to affirmatively seek to enjoin enforcement of the statute against him. ... The question then becomes simply: why should only an actual or potential criminal defendant have a recognizable

interest in attacking this allegedly discriminatory statute and not appellant and her class? They are not, after all, in the position of members of the public at large who wish merely to force an enlargement of state criminal laws. ... Appellant, her daughter, and the children born out of wedlock whom she is attempting to represent have all allegedly been excluded intentionally from the class of persons protected by a particular criminal law. They do not get the protection of the laws that other women and children get. Under Art 602, they are rendered nonpersons; a father may ignore them with full knowledge that he will be subjected to no penal sanctions. The Court states that the actual coercive effect of those sanctions on Richard D. or others can, at best, be termed only speculative." This is a very odd statement, I had always thought our civilization has assumed that the threat of penal sanctions had something more than a "speculative" effect on a person's conduct. This Court has long acted on that assumption in demanding that criminal laws be plainly and explicitly worded so that people will know what they mean and be in a position to conform their conduct to the mandates of law. Certainly Texas does not share the Court's surprisingly novel view. It assumes that criminal sanctions are useful in coercing fathers to fulfill their support obligations to their legitimate children.

Unquestionably, Texas prosecutes fathers of legitimate children on the complaint of the mother asserting nonsupport and refuses to entertain like complaints from a mother of an illegitimate child. I see no basis for saying that the latter mother has not standing to demand that the discrimination be

ended, one way or the other.

If a State were to pass a law that made only the murder of a white person a crime, I would think that Negroes as a class would have sufficient interest to seek a declaration that law invidiously discriminated against them. Appellant and her class have no less interest in challenging their exclusion from what their own State perceives as being the beneficial protections that flow from the existence and enforcement of a criminal child support law.

## APPENDIX JJ

MR. JUSTICE BLACKMUN, WITH WHOM MR. JUSTICE BRENNAN JOINS, DISSENSION.

By her complaint, appellant challenged Texas' statutory exemption of fathers of illegitimate children from both civil and criminal liability. Our decision in Gomez v Perez, ... announced after oral argument in this case, has important implications for the Texas law governing a man's civil liability for the support of children he has fathered illegitimately. Although appellant's challenge to the civil statute, as the Court points out, is not procedurally before us, ante, 615 n 1, 35 L Ed 2d at 539, her brief makes it clear that her basic objection to the Texas system concerns the absence of a duty of paternal support for illegitimate children. The history of the case suggests that appellant sought to utilize the criminal statute as a tool to compel support payments for her child. The decision in Gomez may remove the need for appellant to rely on the criminal law if she continues her quest for paternal contribution.

The standing issue now decided by the Court is, in my opinion, a difficult one with constitutional overtones. I see no reason to decide that question in the absence of a live, ongoing controversy. ... Gomez now has beclouded the state precedents relied upon by both parties in the District Court. Thus "intervening circumstances may well have altered he views of the participants," and the necessity for resolving the particular dispute may no longer be present. Protective Committee v Anderson... Under these circumstances, I would remand the

case to the District Court for clarification of the status of the litigation.

## APPENDIX KK

DISTRICT ATTORNEY'S FIRST CLAIM TO PROSECUTORIAL DISCRETION BASED ON POLICY REASON: page 8 of D.A.'s reply to Appellate Court.

Lastly, the Commonwealth notes that the Order docketed at No. 455 M.D. 1991 s unreviewable because the denial of the second private criminal complaint was based on a policy decision by the D.A.'s Office. In denying the second complaint, the D.A.'s Office felt that this latest private criminal complaint was filed only as an obvious attempt to circumvent the earlier Order of Judge Schaffner. This policy decision was communicated to Cheppa in the letter disapproving the second criminal complaint.

The unreviewability of the second complaint is found in Comm. v. Benz, _____

Pa._____ , 565 A.2d 764 (1989). In Benz, the Penna. Supreme Court considered the denial of a private criminal complaint seeking to prosecute a police officer for voluntary manslaughter. Chief Justice Nix, writing for the majority, stated that, i]f the D.A. had stated policy reasons to support the decision not to prosecute, this Court would show the deference accorded to such a discretionary use of the executive powers conferred in that officer..."

## APPENDIX LL

BASED UPON SEPARATION OF POWERS, PETITIONER'S OBJECTION IN SUPERIOR COURT TO D.A.'s USURPATION OF JUDICIAL FUNCTION.

These complaints were brought to the D.A. pursuant to Rule 133 of the Pa. R. Crim. P. In Benz Justice Larsen wrote:

The changes made to our rules of criminal procedure merely concerned who was to approve the complaint in the first instance. In fact, with regard to related amendments made to the rules of criminal procedure in 1974, the comment to rule 134 stated simply that it was now for the D.A. 'to evaluate the re-sponsibility of the charges contained in the complaint...' Thus, by preserving the right of a private complainant to obtain the independent approval or disapproval of the complaint by a judge of the court of common pleas, Rule 133 does not contemplate that criminal proceedings initiated by private complaint will be subject to the 'policy' and discretion of the D.A.. Benz at 796.

Your Appellant based his complaint to the D.A. upon the perjury and false swearing statute, the Act of Dec. 6, P.L. 1482, No. 334, ssl, 1972. 18 Pa C.S,A, ss4902, 4903.

Subsection (b) of the Act provides in part:

"Whether a falsification is material in a given factual situation is a question of law."

In view of the foregoing, it is for the courts to decide whether the perjury in the case at bar is material and not for

the Commonwealth to determine. The Commonwealth is barred from using its discretion to disapprove these complaints based on a lack of materiality. Neither the trial court nor the Superior Court can sustain the denial of these complaints based upon the Commonwealth's discretion which it never had in the first instance. The D.A. has invaded the providence of the judiciary with his legal interpretation of the word "materiality." As such, the D.A. violated the separation of powers between the executive and judicial branches of government.

APPENDIX MM

IN THE SUPREME COURT OF PENNSYLVANIA
Middle District

COMMONWEALTH OF PENNSYLVANIA
v
STANLEY KITNER

NO. 0242 M.D. ALLOCATOR 1992

APPEAL OF: JOHN CHEPPA, AFFIANT

NOTICE OF APPEAL
and
APPLICATION FOR STAY OF THE RECORD PENDING REVIEW OF A PETITION FOR WRIT OF CERTIORARI IN THE SUPREME COURT OF THE UNITED STATES

_____
JOHN CHEPPA, Affiant

1. That, Petition for allowance of appeal of the within captioned case was made to this court on June 29, 1992.

2. That, the Petition for allowance of Appeal was denied with copy of the order having been mailed by the Deputy Prothonotary on or after February 18, 1993.

3. That, timely Application for Writ of Certiorari will be made to the United States Supreme Court.

4. That, remand of the record should be stayed pending review of the Application for Writ of Certiorari by the Supreme

APPENDIX MM

Court of the United States and final disposition by that Court.

CERTIFICATE OF SERVICE

AND NOW, this 17th day of March, 1993, I, John Cheppa, Affiant in the within captioned case, do hereby certify that I have served by first-class mail, one copy of the attached notice of Appeal and Application for stay of the record upon Richard A. Lewis, District Attorney, Dauphin County Courthouse, Front and Market Streets, Harrisburg, Penna. 17101.

JOHN CHEPPA, Affiant

APPENDIX NN

No. _____

IN THE SUPREME COURT
of the
UNITED STATES of AMERICA

OCTOBER TERM, 1993

JOHN CHEPPA
v.
PENNSYLVANIA ATTORNEY
FOR THE COMMONWEALTH
RICHARD A. LEWIS

PETITION FOR ADDITIONAL TIME FOR FILING A PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Middle District

John Cheppa
7176 Catherine Drive
Harrisburg, Penna.
17112- 3618
717-545-5744

AND NOW, this 30th day of March, comes the petitioner, John Cheppa, appellant in the above captioned action and respectfully represents:

## APPENDIX NN

1. That, this is a case wherein the Pennsylvania Rules of Criminal Procedure have eliminated a Grand Jury and given prosecutorial discretion to the Attorney for the Commonwealth in Dauphin County, Pennsylvania who refused to prosecute a prima facie case of perjury against a public official, thereby, drawing into question, the 5th and 14th amendments to the United States Constitution.

2. That, to my knowledge, the Supreme Court or the Superior Court of Pennsylvania has not certified to the State Attorney General pursuant to 28 U.S.C. ss 2403(b) that the constitutionality of Criminal Procedures Rule 133 has been drawn into question, however, your petitioner has given such notice to the State Attorney General at the time brief's were filed in the Superior Court, on or about November , 1991.

3. That, the issue has proceeded through the State Courts with the State Supreme Court denying to hear the case on February 11, 1993.

4. That, said Order of the Pa. State Supreme Court was mailed to your petitioner's Attorney on or after February 18, 1993 (please see exhibit 1).

5. That, from first receiving the news of the State Supreme Court's decision, your petitioner has been actively seeking an experienced attorney to bring this case to your Honorable Court.

6. That, I have found one such attorney in my area but he is unable to handle the case due to a heavy workload (please see

APPENDIX NN

exhibit 2).

7. That, it is only now realized that failing to find experienced council in my area I am forced to conduct the case prose.

8. That, this case involves the 5th and 14th amendments to the United States Constitution and much research is required with the only available time for doing this work is after normal working hours.

9. That, at least 46 days have elapsed from the prescribed time for filing a Petition for Writ of Certiorari.

10. That, the granting of additional time for filing said petition could not affect the respondent.

WHEREFORE, the prayer of this pleading is that additional time in the amount of 60 days be granted to this petitioner for filing his Petition for Writ of Certiorari.

Respectfully Submitted

_____

by: John Cheppa
Appellant

AFFIDAVIT OF SERVICE

In accordance with US Supreme Court Rule 29.S(c) I, John Cheppa, the undersigned Petitioner, being duly sworn according to law, do depose and say that I am the Petitioner named in the foregoing petition and that a true and correct copy of the attached petition for extension of time for filing a Petition

APPENDIX NN

for Writ of Certiorari has been mailed with first class postage prepaid to the respondent, Mr. Richard A. Lewis, at Dauphin County Courthouse, Front and Market Streets, Harrisburg, Pennsylvania 17101 on March 30TH 1993.

John Cheppa
Appellant

Sworn to and Subscribed
before me this 30th day
of March 1993.

Patricia Lamb Keammerer
Notary Public

---

February 18, 1993

Dear Petitioner:

this is to advise that the following Order has been endorsed on the Petition for Allowance of Appeal in the above-captioned matter:

"02/11/93 Petition Denied.
Per Curiam"

PROTHONOTARY'S OFFICE
SUPREME COURT OF PENNSYLVANIA
EXHIBIT 1

---

APPENDIX NN

March 5, 1993

Dear Mr. Cheppa:

I am sorry to have taken so long in getting back to you, in response to your letter of February 25.

I am very sorry that I cannot come to your help. I am already committed too much in ongoing litigations to be able to turn to anything else.

I do hope that you can find good counsel to aid you.

William B. Ball

EXHIBIT 2

---

APPENDIX PP

SUPREME COURT of the UNITED STATES

No. A-752

John Cheppa Petitioner
v
Pennsylvania

ORDER

UPON CONSIDERATION of the application of petitioner,
IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including July 11, 1993.

/s/ D.H. Souter
Associate Justice of the Supreme
Court of the United States
Dated this 7th day of April, 1993

APPENDIX QQ

**16 P.S. ss 1409 WHEN PRIVATE COUNSEL MAY PROSECUTE**

If any district attorney shall neglect or refuse to prosecute in due form of law any criminal charge regularly returned to him or to the court of the proper county, or if at any stage of the proceedings the district attorney of the proper county and the private counsel employed by the prosecutor shall differ as to the manner of conducting the trial, the prosecutor may present his petition to the court of the proper county, setting fourth the character of the complaint, and verify the same by affidavit. If the court shall be of the opinion that it is a proper case for a criminal proceeding or prosecution, it may direct any private counsel employed by such prosecutor to conduct the entire proceeding, and where an indictment is necessary, to verify the same by his own signature, as fully as the same could be done by the district attorney.

1955, Aug. 9, P.L. 323 ss 1409.

## APPENDIX RR

### No. 72

### A FURTHER SUPPLEMENT

To an act, entitled "An Act to consolidate, revise and amend the penal laws of this Commonwealth," so far as relates to the duties of district attorneys.

Section 1. Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same. That if any district attorney, within this commonwealth, shall neglect, or refuse, to prosecute, in due form of law, any criminal charge, regularly returned to him, or to the court of the proper county; or if, at any stage of the proceedings, the district attorney of the proper county, and the private counsel, employed by the prosecutor, should differ, as to the manner of conducting the trial, it shall be lawful for the prosecutor to present his, or her, petition to the court of the proper county, setting forth the character of the complaint, and verify the same, by affidavit; whereupon, if the court shall be of the opinion that it is a proper case for a criminal proceeding, or prosecution, it shall be lawful for it to direct any private counsel, employed by such prosecutor, to conduct the entire proceeding, and where an indictment is necessary, to verify the same, by his own signature, as fully as the same could be done by he district attorney; and this act shall apply to all criminal proceedings, hereto-fore commenced, and still pending, as well as to those which shall be instituted hereafter.

APPENDIX RR

JAMES R. KELLEY,
Speaker of the House of Representatives.
DAVID FLEMMING,
Speaker of the Senate.

Approved The twelfth day of March, Anno Domini one thousand eight hundred and sixty-six.
A.G. CURTIN.

APPENDIX SS

Commonwealth of Penna.
v s .
Stanley Kitner

ORDER

John Cheppa, through counsel, has filed a petition with this court asking that we act so that Mr. Cheppa's private criminal complaint may be approved by this court and a prosecution, based on it, proceed. On November 29, 1990, Richard A. Lewis, District Attorney of Dauphin County, notified Mr. Cheppa that the request for the private criminal complaint was disapproved. Pursuant to Rule of Criminal Procedure 133(b)(2), Mr. Cheppa seeks to have this court overrule Mr. Lewis's decision and direct that the prosecution proceed. A petitioner behalf of Mr. Cheppa and a memorandum in support of his request has been filed with the court. On January 14, 1991, and answer on behalf of Mr. Lewis was filed in the proceeding. That answer, basically counters the allegations of the petitioner and asserts that the district attorney did not abuse his discretion in this instance, but the answer of the Commonwealth does not provide us with sufficient data to be able to review the matter and make a reasonable decision. Accordingly, while we will not hold a hearing in this matter, we direct that the district attorney's office furnish us with a memorandum setting forth the reasons behind its position so that we can review the data submitted to us, the written arguments of counsel, and decide the issue. The district attorney's office shall file its memorandum no later than March 15, 1991.

BY THE COURT

Emphasis added

APPENDIX TT

EXCEPTIONS TO OPINION AND ORDER OR 4/23/91, M.D. 12, 1991.

4. The Court erred in not holding an evidencing hearing on Affiant's Petition for Approval of Private Criminal Complaint.

BRIEF TO EXCEPTIONS, M.D. 12, 1991

Exception no. 4.

Lets look at the mistakes that have been made in this case:

1. The Court found the D.A.'s Answer lacking and wanting and, therefore, Ordered the D.A. to supply additional information to bolster his case. It is not for the court to Order or advise any of the litigates on what is required by that party to successfully argue its position;

2. The D.A. did supply the additional argument requested by the Court in an ex parte fashion;

3. In the D.A.'s ex parte communication with the Court, the D.A. provided information that was not accurate, misleading and false;

4. The Court picked up on the D.A.'s inaccurate, misleading and false information and used it as substance in denying the Affiant's Petition;

5. The Court erroneously found that the Affiant failed to allege that Kitner knew he was lying when the perjury was committed;

6. The Court erroneously found that Kitner's statements were not material to the case;

7. The Court seemed to have completely overlooked the Affiant's allegations of False Swearing;

8. The Court erroneously found that the D.A. did not abuse his discretion in denying the Affiant's Private Criminal Complaint;

9. And, the Court erroneously found that this Prima Facie did not warrant prosecution.

Although president law has established that in a matter such as this, a hearing is not required. When the Court found that the D.A.'s Answer was wanting and lacking in substance, it was then that the Court should have seen that a hearing was required instead of advising the D.A. on what he should do next.

Obviously, the Court had no way of knowing that the D,A,'s Memorandum would be inaccurate and misleading, but the Court did know that it should not advise any party of how to conduct its litigation.

When the Court found the D.A.'s Answer lacking and wanting, the Court should have Ordered a hearing where the D,A, would have had his opportunity to state his position with the Affiant within hearing range and anything inaccurate or misleading or false, would have been cleared up.

As it was, the Court failed to hold a hearing and by Order, advised the D,A, to strengthen his case. In an ex parte communication, the D.A. did just that, and supplied the Court with inaccurate, misleading and false information which the Court then used as a tool in denying the Affiant's Petition.

APPENDIX TT

AFFIANT'S MEMORANDUM FILED WITH COMPLAINT FOR PRIVATE PROSECUTION IN CASE NO. M.D. 455, 1991.

Therefore, the Affiant requests this Honorable Court to accept the Affiant's Private Criminal Complaint for filing and to find:

That, the Affiant's Private Criminal Complaint has been properly completed and executed;

That, probable cause for prosecution of the Defendant does exist in the form of the Affiant's Affidavit;

That, the District Attorney has grossly abused his discretion in refusing to approve the Affiant's Private Criminal Complaint;

And, to issue a summons upon the Defendant pursuant to Rules 133 and 134 of the Pa. R. Crim. P.

In the alternative, the Affiant pleads that this Honorable Court Order the matter for an evidencing hearing where oral argument can be presented.

FOURTH QUESTION AT ISSUE IN THE SUPERIOR COURT OF PENNSYLVANIA:

Did The Trial Court Error In Not Allowing An Evidentiary Hearing?

By Order dated February 26, 1991, the trial court declined to hold a hearing in this matter. [R. at 185a]. Mr. Cheppa acknowledges that it was within the discretion of the trial court to decide whether or not to hold an evidentiary hearing. However, the Appellant believes that the trial court abused its discretion by failing to hold an evidentiary hearing because of the voluminous amount of material which the Appellant sub-

mitted to the trial court which the trial court had to interpret without the benefit of explanation by counsel or testimony from witnesses.

Mr. Cheppa submitted, along with his Affidavit and Memorandum, an investigative report which was in excess of 100 pages in length. It was difficult for the trial court to fully comprehend everything in the Appellant's investigative report without a hearing. Evidence of that lack of comprehension is found in the trial court's April 23, 1991 Order [R. at 187a] in which it stated that the Appellant did not attach any verification of the weather conditions of August 5, 1983. The converse, however, is true. Mr. Cheppa did attach substantial evidence if [of] weather conditions including a copy of the National Oceanic and Atmospheric Administration Weather Report for that day showing that it rained only after the township officials left the Cheppa property. [R. at 122a].

Furthermore, the trial court states that the Commonwealth did attach to its Memorandum a copy of the Climatological data for the Capitol City Airport for August 5, 1983 showing that the Harrisburg area did receive rain on that day. [R. at 190a]. While the Appellant does not dispute that it rained on August 5, 1983 he does dispute the allegation that it rained at any time relevant to the events of August 5, 1983. It was this misunderstanding which could have been avoided if a hearing had been held. The avoidable confusion caused the court to disapprove the Appellant's Private Criminal Complaint. The Court's misunderstanding stemmed entirely from its inability to comprehend and understand the facts because of its failure to hold an evidentiary hearing.

# APPENDIX UU

Appeals from courts of common pleas 42 Pa. C.S.A. ss742,

"The Superior Court shall have exclusive appellate jurisdiction of all appeals from final Orders of the courts of common pleas, regardless of the nature of the controversy or the amount involved, except such classes of appeals as are by and provision of this chapter within the exclusive jurisdiction of the Supreme Court or the Commonwealth Court."

Rule 1112 (a) of the Pa. Rules of Appellate Procedure

"(a) General Rule. An appeal may be taken by allowance under 42 Pa.C.S. ss 724 (a) (allowance of appeals from Superior and Commonwealth Courts), from any final order of the Commonwealth Court, and appealable under Rule 1101...or from any final order of the Superior Court."

## APPENDIX VV

The Excellent Privilege of Liberty and Property being the Birth Right of Free-Born Subjects of England.
by WILLIAM PENN

The Chief end of the publication hereof is for the information andunderstanding ...I have ventured to make it public, hoping it may be of use to many...not to give away anything of Liberty and Property that at present they do (or of right as loyal English Subjects, ought to) enjoy, but take up the good example of our ancestors, and understand, that it is easy to part with or give away great privileges, but hard to be gained, if once lost. And therefore all depends upon our prudent care and acting to preserve and lay sure foundations for ourselves and the posterity of our loins. In France, and other nations, the mere will of the Prince is law, his word takes off any man's head, imposeth taxes, or seizes any man's estate, when, how and as often as he lists; and if one be accused, or but so much as suspected of any crime, he may either presently execute him, or banish, or imprison him at pleasure; or if he will be so gracious as to proceed by form of their laws, if any two villains will but swear against the poor party, his life is gone; nay, if there be no witness, yet he may be put on the rack, the tortures whereof make many an innocent person confess himself guilty, and then, with seeming justice, is executed. But, In England the Law is both the measure and the bound of every Subject's duty and allegiance, each man having a fixed Fundamental Right born with him, as to freedom of his person and property in his estate, which he cannot be deprived of, but either by his consent, or some crime, for which the law has imposed such a penalty of forfeiture.

# APPENDIX WW

## Politics and the Constitution.
by WILLIAM WINSLOW CROSSKEY

[T]he First Congress intended all the prohibitions in the initial amendments, that are cast in literally general terms, to apply to the states as well as the nation. There was, assuredly, nothing unreasonable in this, since the prohibitions in question were all for "securing Liberties" generally regarded as essential. Any man of the time who read the current newspaper accounts of Congress' proceedings must, then, certainly have concluded that the literal generality of these amendments was intended; and since it is reasonable to suppose the leaders - and, particularly, the anti-nationalist leaders - in the several States, read the accounts of Congress' proceedings religiously, the further inference follows that the legislatures of the States, when they ratified the first eight amendments, must have been aware that, within the scope of all those amendments, or parts thereof, which were expressed unrestrainedly in the passive voice, or in some other literally general form, they were ratifying limitations, not only on the nation, but on the State Governments as well. So it is not in any way strange that good lawyers in the early days - Justice William Johnson, speaking for the Supreme Court itself, in 1819, and for himself alone, in 1820;49 the justices of the Supreme ourt of New York, in that same year;50 and the well-known law writers, William Rawle, of Philadelphia, and Joseph K. Angell, of Providence, in 1828 and 1829[;]51 were of the opinion, before the Supreme Court's decision of Barron v. Baltimore had been handed down, that all such parts of the first eight amendments did apply, in accordance with their plain letter, to all governmental action, whether by the nation or by the separate states.

## APPENDIX WW

FOOTNOTES

[49] Bank of Columbia v. Okeley, 4 Wheat, 235, 242, 244 (1819); and Houston v. Moore, 5 Wheat. 1, 32, 34 (1820).

[50] People v. Goodwin, 18 Johns. (N.Y.) 187, 201 (1820).

[51] See Rawle, chap. x and Angell, Restrictions upon State Power in Relation to Private Property, 1 Untied States Law Intelligencer and Review, 43, 64 (Providence, 1829).